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No.

In the

Supreme Court of the United States

October Term, 1988

Kondian R. Rajaram,

Petitioner

v.

International Typographical Union,
Baltimore Typographical Union No. 12,
Sunpapers Chapel of
Baltimore Typographical Union No. 12,
Jack Poist, Gary Kidwell,

Respondents

and

A.S. Abell Publishing Company,

Defendant

Petition for a Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

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Petitioner's Petition for a Writ of Certiorari

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QUESTIONS PRESENTED FOR REVIEW

1. Is the granting of a final judgment to union defendants erroneous when relief has not been accorded, all equitable relief was denied though losses were sustained, and defendants will escape the consequences of their conduct by relying on technical defenses?

2. Is the granting of final judgment in favor of a union defendant erroneous when rights have vested by way of an arbitration decision to a union member, the union has breached its duty to represent by failing to notify affected members of their entitlements, the union failed to enforce the arbitration decision, and later the union, without notice to the union members affected thereby, dismissed an enforcement action?

3. Is the granting of final

judgment to union defendants on the basis of limitations from the DelCostello decision and a desire for a uniform Federal statute of limitations erroneous when the plaintiff filed his action prior to any notice of the new limitations period and considerations mitigate against applying that new limitations period retroactively?

4. Is the granting of final judgment to union defendants on the basis that a plaintiff failed to intervene in an E.E.O.C. action against those same parties erroneous when the E.E.O.C. was aware of plaintiff's action, the same defendants had informed the E.E.O.C. of an intention to have the two actions joined but failed to honor their statement, the defendants were in default on the plaintiff's action at the time of agreeing to a consent decree with the E.E.O.C., the plaintiff was pro

se, and both actions were pending at the same time in the same court prior to the E.E.O.C. concluding the consent decree which mentioned plaintiff as a party who was harmed?

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Petition for a Writ of Certiorari to
the United States Court of Appeals
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Kondian R. Rajaram petitions
that a writ of certiorari
issue to review the judgment
of the United States Court of Appeals
for the Fourth Circuit,
decided on July 15, 1988

OPINIONS BELOW

The U.S. Court of Appeals for the Fourth Circuit ("Fourth Circuit") without oral argument affirmed the order of the district court on July 15, 1988. (A copy of that unpublished opinion is attached at Appendix ["App."] 2a-5a, and is officially reported at 852 F.2d 566 (4th Cir. 1988).

The Fourth Circuit on Aug. 16, 1988, denied a Petition for rehearing with Suggestion for Rehearing In Banc. (App. 1a-2a.)

This case was assigned to a magistrate without agreement of Petitioner. On Nov. 6, 1983, the U. S. District Court for the District of Md. ("District Court") adopted the first Report and Recommendation ("Report") of the Magistrate on Oct. 18, 1983, and denied all of Petitioner's claims against A.S. Abell Publishing Company ("Abell") were

to be dismissed. (A copy of that Report is attached at App. 60a-81a, and the Nov. 6, 1983 ruling by the District Court is attached at App. 82a-83a.)

On Feb. 27, 1984 the Magistrate issued a second Report on Petitioner's claims against his unions and indicated that contract and duty of fair representation claims should be dismissed on the basis of limitations, and the quasi-contract claim due to insufficient evidence. He indicated that a Title VII action was to be dismissed for a failure to intervene in an EEOC action. Other Title VII claims and a claim on a union by-law were set in for trial. This ruling was accepted by the District Court it its entirety. (A copy of the Feb. 27, 1984 Report is attached at App. 83a-125a. Three letters supplementing the Report are at App. 125a-143a, and the Feb. 15, 1985 ruling by the District

Court adopting the Report is attached at App. 143a-145a.)

Petitioner, alleging new evidence, moved that the earlier interlocutory order be revised in regard to Abell. On Feb. 8, 1985, the Court adopted the Report of Dec. 14, 1984 and ruled that Petitioner in his Motion had failed to meet the technical Requirements of pleading fraud or fraudulent concealment against Abell and further ruled that final judgment in favor Abell be granted. The Fourth Circuit in an unpublished opinion affirmed the Court's judgment, but felt that the opinion was on the merits. (The Court ruling is attached at App. 160a-162a and the related Report is attached at App. 145a-159a. The appellate opinion is attached at App. 164a-181a.)

At the conclusion of plaintiff's case, on the trial of those claims not

previously dismissed, the District Court granted the Motion to Dismiss by Respondents finding no discrimination. (A copy of the opinion of the court is attached at App. 7a-50a.)

Additionally, another case (District Court Case No. B-84-2465), which involves Petitioner as a plaintiff and Respondents and Abell as defending parties, and which sought damages for failure to honor an arbitration award was dismissed on the grounds of the res judicata effect of rulings in the instant case. The District Court adopted the Magistrate's Report on April 21, 1986. The Fourth Circuit dismissed the appeal filed by Petitioner. (A copy of the court ruling is attached at App. 243a-246a; and the related Report is attached at App. 198a-214a. The appellate decision is at Appendix 246a-249a.

A third case was filed in the

Maryland Court to confirm the arbitration award against Abell which Respondents had failed to do. The Maryland courts dismissed the case on the basis of prior federal rulings and limitations. (Maryland order and decision are at App. 249a-250a, 250a-254a and appellate decision is at App. 255a-269a.)

A copy of an EEOC consent decree with Respondents which was obtained as a result of an EEOC charge by Petitioner is at App. 295a-302a.

GROUNDS OF COURT'S JURISDICTION

Date of judgment to be reviewed and jurisdiction of this Court:

It is requested herein that this Court review a judgment of the Fourth Circuit decided on July 15, 1988.

Petitioner's Petition for Rehearing with Suggestion for Rehearing In Banc to the Fourth Circuit was denied on Aug. 16, 1988.

Jurisdiction is conferred on this Court to review the judgment of the Fourth Circuit by writ of certiorari through 28 U.S.C. Section 1254(1).

CONSTITUTIONAL PROVISIONS INVOLVED

U.S. Constitution, Amendment 5:

> "No person shall...nor be deprived of life, liberty, or property, without due process of law;..."

STATUTES INVOLVED

Statutes involved in the opinion and order of the Fourth Circuit and in this Petition are:

29 U.S.C. 185; 42 U.S.C. 2000e;
42 U.S.C. 2000e-2; 42 U.S.C. 2000e-3
42 U.S.C. 2000e-5; 42 U.S.C. 2000e-10
29 U.S.C. 411; 29 U.S.C. 412; and
29 U.S.C. 415.

The Federal Rules of Civil procedure involved in this petition are:

Rule 8 (a), (c), (e) & (f);
Rule 12 (a);
Rule 15 (a), (c) & (d); and
Rule 18 (a) & (b).

The Maryland statutes in this case are from the Annotated Code of Maryland, Courts & Judicial Proceedings Volune:

Title 3: Section 3-223(a)
Section 3-227

Title 5: Section 5-101

The relevant portions of the mentioned statutes and rules are reproduced in the App. at pages 488a-516a.

STATEMENT OF THE CASE

This case involves a complaint which was initiated on Jan. 4, 1980, pro se (App. 314a-325a) by Petitioner against his unions and several union officers due to certain alleged violations of Petitioner's rights.

Petitioner in 1976 was a union member of both the International Typographical Union ("ITU") and the Baltimore Typographical Union No. 12 ("BTU" or "local union"), which he had joined and continued to belong to in order to obtain employment.

Petitioner in 1976 believed that his unions' rules were being violated by union officers and he was being treated

unfairly. He began to complain publicly regarding his treatment and the fact that he was being caused to miss employment opportunities. After losing a week's entitlement in Nov. of 1976 the Petitioner was placed in a position he had been entitled to receive earlier. When the explanations given him were deemed unsatisfactory, Petitioner began seeking relief through the unions' internal grievance and appeal procedures. Petitioner had attained his seniority after a 4 year apprenticeship and by working his way up the seniority list of approved substitutes with Abell.

On Dec. 2, 1976, Petitioner was working at Abell in a temporary until further notice substitute position.

The man, Mr. Fleisig, whose position was being preserved by Petitioner under the prevailing practice, and who had been absent over thirty days and who

would continue to be absent for a long period of time, was still absent. On that date (Dec. 2, 1976) a letter, changing the terms of employment of regular substitute employees and which violated the existing contract (App. 28a, 345a-347a), was written by an Abell executive, John Banach, and sent to the local union. That letter ("Banach letter") caused Petitioner and other union members to be removed from their long-term substitute positions as of Dec. 5, 1976. (App. 355a-357a). While the Petitioner's name was not among the listed long-term substitutes whose positions were being eliminated, he was informed by his union that the letter pertained to him. (App. 405a-406a). Petitioner's local union objected to the removal of its members from their long-term substitute jobs by filing a grievance; no resolution to the dispute was

agreed upon immediately by the parties but they later agreed that the matter should be submitted to arbitration.

These unions and Abell had had a long-term practice of utilyzing regular substitute employees to preserve the positions of absent regular permanent employees. Under the 1974-76 collective bargaining agreement, and prior agreements, the unions and Abell used union members as regular substitute employees to fill in the positions of absent regular permanent employees who were also union members. Abell wished to take advantage of technological advances that would allow a smaller work force. Thus it had a company executive write a letter, as noted above, to the local union to terminate the practice of filling long-term vacancies.

On Dec. 31, 1976, the contract between Abell and the unions expired and

there had not been any resolution of the dispute over the regular substitutes filling the positions of permanent employees who were absent for a long-term period. The members' local union and Abell agreed that they would continue to work under provisions of the expired contract. Petitioner and other substitutes continued to show up for short-term substitute positions which Abell still allowed to be filled by the regular substitutes. At that time, Petitioner was not informed that there was an agreement to arbitrate the mentioned dispute regarding utilization of long-term substitute jobs even past the expiration date of the contract (App. 347a-352a). All he knew was that the matter was being handled by the union which was his representative.

Hearings were held on the mentioned disputed matter before Arbitrator Myron

L. Joseph. On Sept. 7, 1977, while the employees were still without a contract, the arbitrator ruled in favor of the regular substitute employees. The result of the award of the arbitration was a ruling that your Petitioner and other regular substitutes were to be placed back in the positions from which they were removed, to be paid back pay, and that substitute employees were to continue to be hired as per the prior practice. (App. 352a-355a). The arbitration's scope and transcript were not published or disclosed to the affected members by the local union. The local union had knowledge of which union members were removed by Abell from long-term positions on Dec. 5, 1976, that were being represented at the arbitration. It also had kept records of long-term positions that had become available in the interim but which Abell had not

allowed its members to fill.

Other than the fact that the issue being arbitrated was that removal on a date certain caused by the "Banach letter", the total circumstances and agreements between Abell and unions surrounding the arbitration were not communicated to the affected members and information was contained in a non-published private transcript of the proceedings. The local union members affected by the grievance were dependent on union officials acting to keep members informed of the status of their grievance and results obtained. Thus, in spite of its responsibilities, information about an expansion of the issues to be arbitrated beyond the contract expiration date was not provided to the affected members by the local union. (App. 395a-400a). Members were also not informed of their right to

continued employment in long-term substitute positions past the contract expiration date. When a subsequent dispute arose over the award which had been made, and whether it would be honored by Abell, Petitioner was again not informed of the efforts that the local union was utilizing to enforce (App. 360a-365a). Petitioner was not informed of nor able to discover factual details of these circumstances and the agreements between Abell and the union surrounding the arbitration, its hearing, and enforcement efforts until much later when some discovery was obtained in the instant case from the local union. Petitioner believed that his unions had breached some of their responsibilities and the quasi-contract (under which he worked) through secret agreements, had retaliated against him for his public complaints, and had im-

properly caused his losses and termination by not negotiating on his behalf. Language to that effect for those harms was included in the Second Amended Complaint. The Magistrate dealt with these matters (including whether the Petitioner had his long-term position abolished as retaliation) by granting summary judgment to Respondents based on the newly recognized six-month statute of limitations running either from the date of Dec. 5, 1976, (which was prior to the time that the arbitration decision was rendered and at a time when the matter was being handled by the local union) or from August of 1978 when a Charge was filed by Petitioner with the Equal Employment Opp ity Commission ("EEOC") (while an orcement action by the local union was still pending in the District Court) in his Report on Feb. 27, 1984. That Report was is-

sued prior to the time that evidence of the arbitration agreements and enforcement actions, or lack thereof, was known to Petitioner. (App. 369a-371a). After the Magistrate ordered discovery to be provided, a clue was obtained that was pursued by counsel. The local union did not disclose the arbitration agreements, transcript of proceedings, and fact that an enforcement action was filed and dismissed to Petitioner's counsel in discovery. The details that were later discovered in April of 1984 are discussed below coincidently with their time of discovery.

In July of 1978 all regular substitute employees were informed, by the union that a new contract was reached, that their positions were being effectively terminated and that they would only be entitled to receive a one-time sum of Fifteen Hundred Dollars

($1,500). They were further informed that, if a regular substitute employee did not sign a release and accept the $1,500 payment within thirty (30) days from the date of contract approval, he would receive nothing. Nothing was mentioned about the arbitration award or then pending enforcement action by the local union or Abell in the release that was prepared for those affected members. (App. 365a-367a). The essence of the new contract was that other local union members, who had permanent lifetime positions as a result of the prior contract, received some improvement in their pay and benefits. Petitioner continued to appear at Abell's place of business to inquire about employment and was informed that none was available by both Abell's representatives and his local union. (App. 404a-405a). Nothing was said to Petitioner about his rights

and entitlements that resulted from the successful award. On August 22, 1978 a letter was sent to the Petitioner from Abell, signed by an executive, Mr. Paul Bowen, informing Petitioner that an enclosed check in the amount of Two Hundred and Forty-six Dollars and Seven Cents ($246.07) represented back pay in full accordance with the Myron L. Joseph arbitration award. The money was only for the period until the previous contract expired, from Dec. 5, 1976 through Dec. 31, 1976. This letter purported by its terms to result from a joint review of the records by both the company and the union. (App. 367a-368a).

On August 30, 1978, Petitioner, after having finally completed the extensive internal union grievance and appeal procedures over the previously mentioned unfair treatment and violation of union rules, which had required over a

year and a half to complete, complained to the EEOC in regard to alleged discriminatory practices by his unions and their officers. (App. 283a-287a). Petitioner had been informed by his unions that he could not seek redress for his grievances about union practices outside the unions until he had fully exhausted their internal proceedings. (App. 282a-283a). He believed that if he brought any complaints to outside authorities, he would jeopardize his necessary union membership, seniority placement, and employment. In addition, the local union and Abell had not posted required notices on their premises, which would have directed the Petitioner to proper agencies and which would have informed him of his rights under Federal law. The EEOC upon examining the Petitioner's charge found that a union by-law required members to exhaust internal

procedures before going to the EEOC. It believed that the unions' requirement of full exhaustion violated Federal law, and after its attempted conciliation efforts failed, it brought a court action to effectuate a change in the unions' by-law. (App. 287a-295a). Petitioner indicated disagreement with the scope of relief being sought by EEOC and was informed that he could obtain private counsel and intervene. Thereafter, EEOC provided Petitioner with a "right to sue" letter. The Petitioner informed EEOC that he would intervene by filing his own action. (App. 302a-303a).

On Jan. 4, 1980, after having received the required "right to sue" letter from the EEOC and not having been able to obtain private counsel, Petitioner filed the instant suit, pro se, against his unions and some union officers as a separate action. (App.

314a-325a). At that time the recognized limitations period in Maryland was three years for the bringing of an action to enforce an arbitration award and three years to sue a union for failure to represent. (DelCostello v. International Brotherhood of Teamsters, 510 F.Supp. 904). Abell was not listed as a defendant. Counsel for the Respondents informed the EEOC that he would have the two actions joined. (App.307a-310a). Thereafter, on April 3, 1980, Petitioner obtained default judgments against all Respondents except the ITU. (App. 50a-56a). On June 18, 1980, the EEOC action was settled by way of a consent decree. The unions agreed to change their by-law so as to no longer require full exhaustion by union members before the members could consult the EEOC. (App. 295a-302a, 182a-183a). The changed by-law cured the Title VII violation perceived by the

EEOC but failed to address the by-law's conflict with the Labor-Management Reporting and Disclosure Act ("LMRDA"). (App. 313a-314a). While the Petitioner was listed in the EEOC Complaint and the Consent Decree as a person entitled to relief, none was provided. (App. 295a-302a). Still later, after the Respondents (who were in default) moved the District Court to strike the default judgments; their Motion was granted by the Magistrate on August 13, 1982, and the Complaint was determined to be prolix. (App. 56a-58a). The Petitioner after obtaining counsel asked the Magistrate to reconsider his determination on the defaults since counsel for the Respondents had been aware of the prior EEOC action and whether the pro se Complaint was wordy or not did not appear to relate to Respondents' duty to timely file an Answer. That request was

denied. (App. 58a-60a).

On Jan. 20, 1983, Second Amended Complaint was filed with assistance of counsel. (App. 325a-345a).

Among the claims listed against the Respondents were claims for violations of Title VII, claims for violations of contract and duty of fair representation, and for violation of a quasi-contract. Abell was included as a defendant for the first time.

On November 6, 1983, the District Court adopted the Magistrate's Report and Recommendation that Abell's Motion to Dismiss be granted as to all contract and quasi-contract claims against it. A noted basis of the ruling was limitations. The quasi-contract claim was determined to be a state contract action. (App. 60a-83a). No discovery from Abell had been permitted the Petitioner.

On February 27, 1984, the Magis-

trate recommended that Respondents' Motion for Summary Judgment be granted as to all of Petitioner's contract, duty of fair representation and quasi-contract claims. (App. 83a-143a). The decision was based on grounds of limitations and lack of evidence to sustain the quasi-contract theory. A determination was made that the quasi-contract claim brought by Petitioner was a state contract claim brought under the rubric of pendent jurisdiction. The Magistrate also determined that Petitioner was not entitled to relief under Title VII from harm caused by the illegal union by-law since he had failed to intervene in the EEOC action. The Respondent's attorney had not had the Petitioner's action joined to the EEOC action as he had earlier indicated he would. (307a-310a). No discovery of the arbitration proceedings or enforcement action was

obtained from Respondents before the Magistrate made his Recommendation. The Court later adopted this Report in its entirety. (App. 273a-275a).

On November 16, 1983, discovery of documents from the local union's files had begun by counsel for Petitioner after the Magistreate ruled that Petitioner have access to such documents. As review of massive union documents progressed, documents were discovered which indicated that there was a dispute between the local union and Abell regarding Abell's compliance with the arbitration award and that the matter had been taken to the National Labor Relations Board ("NLRB"). When nothing else would be provided by the local union, and other efforts to obtain the material were unsuccessful, a request was made to the NLRB.

In April of 1984 a copy of the

private transcript of the arbitration proceeding was obatained by Petitioner from the NLRB under a Freedom of Information request. (App. 369a-371a). Information therein included the full terms of the agreements between Abell and the union, details of an expansion of the issues to be arbitrated, and details about the scope of the decision including the fact that it extended beyond December 31, 1976, and its basis. (App. 347a-352a, 395a-400a, 352a-355a).

Petitioner also discovered that the union, after the NLRB dismissed its untimely charge (App. 485a-488a), had timely filed an action in the Federal District Court (Case No. N-78-455) (App. 360a-365a) about the enforcement of the arbitration award which it later voluntarily dismissed without informing the affected members. (App. 368a-369a). From reading the documents from the

union and Abell to the NLRB and the District Court, Petitioner discovered that Abell and the union, during the arbitration hearing, agreed to arbitrate all issues regarding the hiring of substitute employees and that they agreed that they would abide by the arbitrator's determination without regard to the expired status of the collective bargaining agreement.

Petitioner also discovered at that time Abell was extremely displeased with decision of arbitrator, had filed a minority report, and resisted payment and action required by the holding. (App. 360a-365a). In spite of its stated position regarding the award, Abell had not timely appealed the arbitration decision.

On May 14, 1984 Petitioner filed two (2) suits in the Maryland State Court on behalf of himself and all other

substitutes affected by the arbitration decision: (1) A case to affirm the arbitrator's award, naming Abell as a defendant (App. 371a-378a); and (2) a second case against Abell, the unions, and several Abell and union officers for damages resulting from non-payment of the full amount due to the substitutes as a result of the award. (App. 378a-389a). A request was made for class certification.

In the suit to affirm the award (suit mentioned as number (1) above), Petitioner, on behalf of himself and the others requested that an auditor be appointed to assist in establishing the exact amount due as full payment as a result of the award. Petitioner obtained a default judgment against Abell in that lawsuit, but it was later set aside. He brought an appeal in the Maryland State Court, and later filed a

Petition for Certiorari, No. 85-1211, on January 17, 1986, with the instant Court as to the State Court's allowing the default judgment to be withdrawn against Abell. Those attempts to have default judgment reinstated were not successful. Subsequently, the State Circuit Court Judge, on April 23, 1986, on the lawsuit designated as number (1) above to confirm the arbitrator's decision, ruled in behalf of Abell, and granted Abell a dismissal with prejudice on the basis of res judicata and limitations as a result of prior rulings by the Federal Courts. (App. 249a-254a). On June 15, 1984 the Maryland State lawsuit (suit mentioned as number (2) above), against Abell, the unions, and officers of both Abell and the unions for damages resulting from non-payment of the full amount due to the regular substitutes as a result of the award, was removed by Abell to the

Federal District Court.

On October 12, 1984, Petitioner filed a Motion for Revision of Interlocutory Order of Court requesting that Abell be brought back in as a defendant in the instant case. The earlier recommendation by the Magistrate on Petitioner's failure to represent claims against the Respondents was still interlocutory (and had not been adopted by the District Court Judge) and other claims against them were still awaiting trial. The Motion as to Abell was based on the newly obtained evidence from the NLRB of joint misrepresentation and concealment by Petitioner's unions and Abell and stated details about his diligence including his counsel's search for necessary information, and how he was not aware of his full entitlements prior to his discovery. He stated therein that he was informed by both his

local union and Abell that work opportunities were not available. He noted that he was not able to state the exact amount to which he was entitled. Even though the arbitrator's decision had indicated that the regular substitute employees were to be put back to work as of the date of the award, only the local union and Abell could supply the details relating to absences of regular permanent employees that would have been filled by the regular substitutes.

On October 19, 1984, a scheduling conference was held with Judge Black in the District Court in which all matters pertaining to the both the removed case and the instant case were simultaneously referred by the judge to the Magistrate.

On October 26, 1984 Abell submitted its Answer to Petitioner's Motion for Revision of Interlocutory Order of Court, wherein it requested a hearing.

No specific information was provided by Abell to show how the new evidence cited by Petitioner was available to him prior to the time indicated in the Motion. (In contrast, see App. 389-395a).

On Dec. 14, 1984, the Magistrate submitted his Report to the Court on the Motion for Revision, without having held the requested hearing. (App. 145a-159a). The Magistrate ruled on behalf of Abell as a result of the Motion being considered insufficient and too conclusory to meet the test of pleading fraudulent concealment.

On February 8, 1985, a "de novo" hearing was held in the District Court on Petitioner's Exceptions and Objections to the Magistrate's Report on the Motion for Revision and the court ruled that the Report and Recommendation of the Magistrate be adopted in its entirety. (App. 160a-162a). The District

Court Judge did not read the arbitration transcript material and stated that his decision as to Abell being brought back into the original action was based on the Motion for Revision being insufficient to comply with requirements to state specific facts about fraudulent concealment and misrepresentation to toll the statute of limitations as specified to be necessary in prior court holdings. The Court refused a request to allow an amendment. (Docket Sheet, page 11). The Court also found that it was proper to enter final judgment under Rule 54(b) on behalf of Abell.

After an appeal was filed by Petitioner as to the ruling on Abell in the instant case, the United States Court of Appeals for the Fourth Circuit ("Fourth Circuit") affirmed the District Court determination on January 9, 1986. The Fourth Circuit concluded in an unpub-

lished opinion that while the District Court Judge had stated that his decision was based on the wording of the Motion to Revise, that in its view the decision was on the merits. It found that insufficient evidence of fraudulent intent by Abell had beed presented. It noted that Abell had informed the local union of its objections to the arbitration award. (App. 174a). The appellate decision did not discuss the fact that the local union had timely filed an action to enforce the arbitration award against Abell and was the proper party to pursue it. The fact that the local union's enforcement action was dismissed by the Respondents without notice to the members affected, who could believe it still was pending, was also not included as discussion in the opinion. The appellate court did not state that the diligence that Petitioner exercised as a

lay person was unreasonable as to claims against Respondents. That court did not indicate that a claim against Respondents was untimely, having been filed on January 4, 1980. (App. 164a-181a).

The Fourth Circuit denied the Motion for Rehearing on that ruling on Feb. 25, 1986. (App. 181a-182a).

A Petition for Certiorari, No. 85-1929, was filed on May 27, 1986, with the instant Court raising various grounds as to the dismissal of Abell from the instant case and was denied.

On February 15, 1985, the district court, having held a hearing, overruled the Petitioner's Exceptions and Objections to the earlier Report of the Magistrate which eliminated Petitioner's claims for breach of contract, duty of fair representation and quasi-contract claims against the Respondents in the instant case. (App. 143a-145a).

On March 28, 1985, the Magistrate issued his Report and Recommendation as to the removed case (case number (2) above), and determined that the matter as to Abell was controlled by the earlier rulings in the instant case. He recommended that Abell's Motion to Dismiss be granted on the basis of res judicata. The Magistrate noted that Petitioner's 29 U.S.C. Section 185 claims against Abell were earlier dismissed because of limitations. He also found therein that the action as to relief from harm caused by the unions on the arbitration matter should proceed through the original action and not the new removed action. The Magistrate found that the claims in the removed action against the unions were similar to claims of failure to represent and fraudulent concealment that had been dismissed in the instant case. The

ruling as to the union was made despite the fact it had made no request for one. The Magistrate determined that res judicata could be applied on behalf of the union. The Magistrate found that Petitioner's claims as to Respondents would not be prejudiced if Petitioner's claims against them in the new removed action were barred, since if and when final judgment was entered on the instant case, any part of the decision which was adverse could be appealed. (App. 198a-214a).

The District Court adopted this Recommendation by the Magistrate on April 21, 1986, and dismissed the removed action with prejudice. (App. 243a-246a).

Thereafter Petitioner filed an appeal, No. 86-1161, to the Fourth Circuit which dismissed the appeal in an unpublished per curiam decision on the

reasoning of the District Court below on June 25, 1987. (App. 246a-249a).

A proposed pre-trial order was filed by Petitioner which requested the District Court to allow amendments to the Second Amended Complaint on the basis of negligent misrepresentation (for use as an alternative theory to allow claims against Respondents to be pursued), on the basis of fraud (for allowing Petitioner to spend four years attempting to gain permanency at Abell through seniority at a time that the local union was aware of automation and negotiations to entirely eliminate regular substitute employees there), and to reinstate the Title VII action (for being the party that led the EEOC to bring an action to change an unlawful union by-law). (App. 420a-424a). Those requests were denied.

Thereafter a trial before the

District Court was held in April of 1987 on those claims which had not previously been dismissed (Title VII claims and on the claim that the unions' by-law was violative of the LMRDA). The trial court found that while losses had occurred to Petitioner from union actions in Nov. of 1976 and Jan. 1977 they did not derive from discrimination and that the by-law did not cause Petitioner to continue his internal union appeals. The Court denied further requests to deal with the arbitration matter even when the court was advised that it had not directly dealt with the arbitration matter previously for Respondents as a failure to represent claim in the instant case (App. 424a-464a, 483a-484a). Other requests to the Court to revise its earlier rulings on dismissed counts were refused and evidence not admitted (App. 406a-419a, 464a-483a) in spite of

the court having heard evidence of union non-communication with Petitioner on the arbitration matter after the new contract was adopted in July of 1978. Thus, the court granted Respondents' Motion at conclusion of Petitioner's case.

Thereafter an appeal was taken by Petitioner to the Fourth Circuit, No. 87-1078, which affirmed the District Court in an unpublished per curiam opinion without a hearing having been held on July 15, 1988. (App. 2a-5a).

A Petition for Rehearing with Suggestion for Rehearing In Banc was denied by the Fourth Circuit on August 16, 1988. (App. 1a-2a).

BASIS OF ORIGINAL FEDERAL JURISDICTION

This case was first presented to the District Court based on 28 U.S.C. 1331; and 28 U.S.C. 1343; and statutes 29 U.S.C. 185; 42 U.S.C. 1981; 42 U.S.C. 1994; 42 U.S.C. 1985; 42 U.S.C. 1986;

42 U.S.C. 2000e; 42 U.S.C. 2000e-2(a); 42 U.S.C. 2000e-5; and 42 U.S.C. 2000e-10.

REASONS FOR ALLOWANCE OF THE WRIT

This Court should exercise its supervisory power to ensure that lower courts do not dismiss an action merely because it involves what the District Court perceives to be minor damages from a wrong (App. 24a) which is brought by an individual. A long-term result of the lower court's reasoning would be that the federal courts are to be reserved for a particular class of litigants. Petitioner was required to utilize the federal courts which had exclusive jurisdiction over many of the claims which were brought. Many of the claims were brought as alternative forms of relief. Petitioner requested the courts to provide him equitable relief, and the District Court provided none.

Instead, the court insisted that Petitioner meet stringent technical requirements or lose his actions. The District Court in the instant case found that damages were incurred by Petitioner, and then dismissed all claims rather than provide full relief. It was clear at that time that the State of Maryland's statute of limitations had run on pendent jurisdictional claims while the pending case proceeded. (App. 515a). No equitable relief was provided to Petitioner against Respondent union defendants that had "unclean hands" and were seeking to utilize a statute of limitations and technical requirements to escape liability. Those Respondents delayed the Petitioner from going to court for over a year and a half by use of an unlawful union by-law (App. 111a-113a). The unions had falsely informed the Petitioner that he had to fully

exhaust internal procedures before going to any outside authority (i.e., such as the EEOC, App. 282a-283a) and the union procedures could not be exhausted within the four month period of time specified in the LMRDA, or reasonably even a six month period. Further, the local union did not advise Petitioner of the LMRDA (App. 403a-404a), and the court determined that Petitioner had to request the union to inform him about that particular statute, which he had no prior knowledge of, in order for Petitioner to recover for a failure to inform (App. 110a-111a). Earlier, Respondents falsified permanent employment prospects to Petitioner as a new member of the local union and had him perform services for other members (as a regular substitute for four years) in what it knew was a futile effort to gain a permanent position. The Magistrate did not

recognize the quasi-contract claim of Petitioner for his years of service and called it ethereal. Yet these services were used by the local union to sustain its memberships' permanent positions during the time when members would have long term absences from employment. This maintained the unions' positions at Abell and was a benefit to them. Respondents were unjustly enriched by having had the ability to utilize Petitioner's services under the quasi-contractual relationship that existed between them. That injustice has never been properly addressed by the courts below and a reversal to allow equitable relief on that claim is warranted. Claims such as these have been recognized alternatively as the action of assumpsit. Later, Respondents falsely informed the EEOC that they would have the pro se action of Petitioner joined

to the EEOC action (App. 307a-310a). Respondents did not do so and later claimed that the claim on the by-law should be dismissed for a failure to intervene in the EEOC action. Respondents assured Petitioner and others that a grievance was filed on their behalf with regard to a breach of the collective bargaining agreement, and was being pursued by them as their authorized representative, and then made secret agreements which they did not disclose to their members. Having won an arbitration proceeding, the local union failed to have the award enforced and secretly dismissed the action they had filed to achieve that result. Later, the local union had members who were substitute employees sign an agreement, under coercion, which waives all their rights to employment for a single payment of $1,500.00 without

disclosing to them what was being traded for that payment. Information about the arbitration was intentionally kept secret and not even disclosed in response to court ordered discovery. The local union relied on a statute of limitations to escape liability. The local union was required to bargain on behalf of all its members and only bargained for some while lying to the others as to their entitlements. In the face of this evidence the lower court seemed consumed with an effort to dispose of all claims while requiring perfection from the Petitioner. All the actions of the Respondents were excused and considered separately as unintentional acts which were to have no consequences rather than as a pattern of breaches of fiduciary responsibility or intentional conduct. Thus, all of the following acts by Respondents were

forgiven: (1) a statement to Petitioner that he could achieve a permanent position by working his way up the seniority list of regular substitutes with Abell after the local union was told in negotiations that there was no need for regular substitutes because of new automation; (2) local union officials caused Petitioner to be by-passed from a position for a week and never compensated him; (3) during discovery relevant records about the arbitration matter and the local union enforcement action brought in the District Court were not produced; (4) after local union officials testified that records in their custody which were known to be relevant to the claims tried before the District Court were allegedly stolen, the lower court did not raise an evidentiary presumption against the Respondents from the "stolen" records,

or raise the presumption from other records which were also not produced and not claimed to be stolen; (5) the District Court did not grant equitable relief to a pro se litigant and dismissed a Title VII claim, which the EEOC earlier had pursued to obtain a consent decree, on the basis of Petitioner's failure to intervene while not considering the statement of counsel for Respondents that he would cure that defect as estoppel or waiver; (6) the local union's counsel failed to timely file an answer to the pro se Complaint of Petitioner for certain Respondents and the court allowed default judgments to be withdrawn without an adequate reason; (7) the local union failed to file a timely action for enforcement of the arbitration with the NLRB causing the charge to be dismissed; (8) the local union failed to pursue the timely Dis-

trict Court action for enforcement of the arbitration award, which it filed, causing dismissal of the timely District Court action for enforcement of the arbitration without notice to the membership of the dismissal, thereby causing their subsequent right to enforce it to be foreclosed; (10) the local union never informed the union members who were regular substitutes about their entitlements from the arbitration agreements, or that the arbitration award extended past December 31, 1976; (11) the local union never informed the membership of their secret agreements to negotiate away rights from the arbitration award without any approval and without a vote; (12) the Respondents approved of the non-discloser of the arbitration award entitlements in the release prepared for substitutes to sign to receive the $1,500.00 payment;

(13) the Respondents never reimbursed the expenses caused Petitioner by the illegal union by-law; (14) Respondents took advantage of the delay in Petitioner's bringing his action to claim limitations on the failure to represent claims; and (15) the local union was a party to a letter sent by Abell that misled the Petitioner as to his entitlements from the arbitration award.

None of these actions or failures resulted in any liability or consequences being imposed on the Respondents in contrast to determinations made on the Petitioner's claims from his alleged failures. This Court should exercise its supervisory power to see that such one-sided justice is not condoned. Moreover, the lower court's rulings of requiring strict adherence to technical requirements by a layman seem to be in opposition to the instant Court's

holding in Glus v. Brooklyn Eastern District Terminal, 359 U.S. 231:

> "No man may take advantage of his own wrong. Deeply rooted in our jurisprudence this principle has been applied in many diverse classes of cases by both law and equity courts and has frequently been employed to bar inequitable reliance on statutes of limitations."

See also, Love v. Pullman Co., 404 U.S. 522 (1972); Coke v. General Adjustment Bureau, Inc., 640 F.2d 584 (1981) and cases cited therein. Cf. Zipes v. Trans World Airlines, Inc., 455 U.S. 385 (1982).

Maryland law agrees with these principles. Farmer v. O'Carroll, 162 Md. 431 (1932), describes the nature of constructive fraud which comes under the guiding principle of equity where persons stand in confidential relation towards each other. That court determined that vigilance, not exercised because of trust and confidence reposed in a party, could not assure benefit to

the deceitful party. Williston on Contracts, sec. 1516, states that one should not be assured of the benefit of a deceit made possible by the defrauded party's genuine belief, although founded in stupidity or credulity. See also Gross v. Stone, 173 Md. 653. (1938), wherein it is stated, at 666:

> "A court of equity will not permit one party to take advantage of and enjoy the benefit of an ignorance or mistake of law by the other, which he knew of and did not correct."

Recently, the Maryland Court of Special Appeals re-affirmed this principle. In C & P Telephone Company of Maryland v. Sandra A. Scott, CSA, No. 107, Sept. Term, 1988, Filed November 3, 1988, Reported in the Daily Record on Monday, November 7, 1988, the court held, in the context of a worker's compensation suit, that an injured employee's reliance on a statement by an employer that everything would be taken

care of could estop the employer from claiming a statute of limitations defense when the employee out of time brings a suit. The court went on to hold that equitable estoppel need not be the result of fraud, and need not arise from egregious or deliberate conduct. It merely requires a representation of an intention to act and reliance on the intention by another.

Moreover, the documents submitted in the instant case, show how the acts of the Respondents, through negligence, misrepresentation and concealment, prevented Petitioner from earlier coming to court with his claims.

This Court should grant this Petition and clearly state that a court should require a union, which stands in a confidential relationship with its members, to accept the responsibilities incurred thereby.

Petitioner also requests that his Petition be granted to correct the error committed by the District Court in regard to his failure to represent claim in regard to the aribtration award. The District Court dismissed all of Petitioner's failure to represent claims on the basis of limitations having run prior to a timely claim being presented. The court viewed limitations as running from the date of December 5, 1976, when Abell no longer allowed regular substitutes to cover long-term vacancies, or from August of 1978, when the Petitioner went to the EEOC or terminted his relationship with Abell. In using the earlier date the lower court did not consider the fact that as a union member Petitioner had no right to bring a claim, other than a grievance through his union, on his own behalf at that time. That step was a required

contractual remedy. In fact, the local union instituted such a grievance for the Petitioner and as noted above a decision was not made until September 7, 1977, by the arbitrator. (App. 352a-355a). The arbitrator's decision vested certain property rights to the Petitioner. Thereafter, the local union did not inform the Petitioner of those rights, (in regard to the agreement to go beyond the contract expiration date) and assured him that enforcement was being pursued. As his authorized representative, the local union did bring an enforcement action in the District Court. (App. 360a-365a). It did so without informing Petitioner that it was taking that particular action. Under Maryland law the local union would have had three years from September 7, 1977, to bring that enforcement action. (App. 515a-516a). Moreover, the local union

was the proper party with the sole right, as authorized representative, to pursue the enforcement action initially. Later, the enforcement action was dismissed without notice to Petitioner. (App. 368a-369a, 404a). Petitioner's time to bring his own enforcement action could only run from the time he was able to bring his own action. That time would run from the date that the local union no longer was enforcing the arbitration award and notified him of that fact. The date of dismissal of the local union enforcement action was September 11, 1978. The time for Petitioner to bring his own action would then have been three years from that date. See, DelCostello v. International Brotherhood of Teamsters, 510 F. Supp. 716 (D.Md. 1981). On January 4, 1980, Well within limitations as it was then known, Petitioner instituted his pro se

action. All his claims would relate back to that date. See, Fed. R. Civ. P., Rule 15(c). (App. 509a-513a) However, the use of the time that the local union dismissed its enforcement action, or the later dates when the Petitioner terminated his employment with Abell or went to the EEOC, does not contend with the fact that the union was a party to a letter dated August 22, 1978 (App. 367a-368a), that misinformed Petitioner of his full entitlements from the award and led him to believe that he received all that he was due. Further, the local union never informed Petitioner that it was dismissing its enforcement action and operative facts were only learned in April of 1984. (App. 369a-371a). Thus, limitations should only run from that date. Limitations usually begin to accrue when operative facts are known as stated in Lewis v.

Clark, 534 F. Supp. 714 (D. Md. 1982). However, as the Maryland State Court stated in O'Hara v. Kovens, 305 Md. 280 (1186), the circumstances may be such that one would not be on notice. The treatment by the District and Appellate Courts of these matters in the instant case demonstrate the need by this Court to define the degree of knowledge required to have limitations begin to accrue. In Tulsa Professional Collectioon Services, Inc. v. Pope, Executrix of the Estate of Pope, ___ U.S. ___ (1988), No. 86-1961, Decided April 19, 1988, this Court held that due process required that notice be sent by mail to notify a creditor that his property interest could be adversely affected if a claim were not filed within a limited time period. This reasonable notification requirement that one had to meet before limitations begins to run should

be applied to unions handling claims for members and in the instant case. Thus, since the union as a fiduciary failed to notify Petitioner of its abandonment of its enforcement action, limitations should not be allowed as a defense on Petitioner's failure to represent claim regarding the arbitration award. This Court has, by virtue of its holdings, given unions great authority and has consequently limited individual action. Thus, a union member must utilize internal union remedies on his grievances before bringing a claim. He can be required to expend four months doing so (App. 501a-503a). The Court has set out a limited period thereafter when a claim could be brought on the theory that quick resolution of labor disputes required it. It is equally as important to announce that the Court will require unions to act responsibly

in light of that authority to prevent the entire process from becoming a sham.

This Court should also exercise its supervisory function to instruct appellate and lower courts regarding retroactive application of the holding in DelCostello v. International Brotherhood of Teamsters, 462 U.S. 151 (1983) in which this Court adopted the six month limitations period for hybrid claims. Using the facts in this case and the test applied in Chevron v., Huson, 404 U.S. 97, 106 (1971), the DelCostello case was a new rule of law overruling past precedent which was not foreshadowed. Secondly, in weighing the merits and demerits of the new limitations rule and its purpose and effect, certainly the rule is well established at this time and a uniform federal standard of limitations in labor law exists. Announcing that the Court

would refuse to apply the DelCostello holding retroactively under circumstances such as exist in the instant case would only affect few cases. Such a decision would be in conformity with equity and other holdings of this Court. In weighing the last factor of the test, the inequity of the lower court's decision to apply DelCostello retroactively, one can note that Petitioner had no advance notice of the shorter limitations period at the time he filed his action. The need for the Court to accept this Petition on this basis is clear since the appellate and lower courts seem determined to apply DelCostello retroactively regardless of the facts and other precedent in other areas of law.

It is arguable that, as a result of the local union's conduct in this case, there was no hybrid claim to

pursue and only a straight claim existed with a longer limitations period as specified in Maryland law.

This Court is also requested to accept this Petition to instruct the lower courts in the proper application of estoppel and to overrule bad precedent. In the instant case the District Court ruled that Petitioner placed his case as regards the illegal union by-law in the hands of the EEOC when he chose not to intervene in the EEOC action. The Magistrate recommended, and the District Court Judge agreed, that under the authority of Adams v. Proctor & Gamble Mfg. Co., 697 F.2d 582 (4th Cir. 1983), Petitioner expressed a conclusive willingness to be bound by the outcome in the EEOC action. The facts of this case and other precedent indicate that such a holding is improper for charges which are typically brought by laymen to

the EEOC. Further, Petitioner was a pro se litigant who informed the EEOC that he would intervene by filing his own action. In the instant case Petitioner had also obtained default judgments against certain Respondents at the time that the EEOC entered into a consent decree. It was patently clear that Petitioner did not express a "... conclusive willingness to be bound by the outcome." This Court should accept this Petition to review that authority. Certainly, the Respondents in the instant case should not be able to rely on the Adams case and utilize the benefit of their own misdeed to avoid liability. Under the principle of estoppel Respondents should be unable to use the Adams precedent as a defense since their counsel was aware of the defect of Petitioner's effort to intervene and indicated that he intended

to cure it. Respondents through counsel may have caused both the EEOC and Petitioner to rely on his statement and Respondents should not be allowed to profit from it. See, C & P Telephone Company of Maryland v. Sandra A. Scott, CSA, No. 107, Sept. Term, 1988, Filed November 3, 1988, Reported in the Daily Record on Monday, November 7, 1988.

Petitioner believes that these matters merit the Court's attention to redress injustice.

CONCLUSION

For the reasons discussed above, a writ of certiorari should issue to review the judgment and opinion of the United States Court of Appeals for the Fourth Circuit.

Respectfully submitted by,

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Dated this 14th day of November, 1988.

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2.	United States Court of Appeals for the Fourth Circuit's Per Curiam decision dated 7-15-1988 in Appeal No. 87-1078, which affirmed on the reasoning of the district court	2a-5a
3.	United States District Court for the District of Maryland's Order, Paper No. 185, dated 4-16-1987 in Case No. B-80-0012, which granted Respondents' Motion to Dismiss the case B-80-0012	5a-7a
4.	United States District Court for the District of Maryland's oral Opinion in Case No. B-80-0012, Paper No. 192, rendered on 4-15-1987 at the end of trial	7a-50a
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5. Orders of Default, four (4), Paper Nos. 5-A thrru 5-D, dated and entered on April 3, 1980 in the District Court in Case No. B-80-0012 which was then known as JH-80-0012, against Respondents Baltimore Typographical Union No. 12, Sunpapers Chapel of Baltimore Typographical Union No. 12, Jack Poist and Gary Kidwell 50a-56a

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17. United States District Court for the District of Maryland's Order dated 8-12-1985 in Case No. B-80-0012, Paper No. 165, stating "plaintiff may not designate for the appeal

record in B-80-0012, anything which may pertain to the closed file of Case No. JH-79-1826", i.e., the case filed by EEOC and stemming from the charge filed by Petitioner with EEOC on 8-30-1978 and based on union by-law, Article V, Section 43 162a-163a

18. United States Court of Appeals for the Fourth Circuit's unpublished per curiam decision in Appeal No. 85-1268, dated 1-9-1986, as to Rule 54(b) final judgment to Defendant A.S. Abell Publishing Company 164a-181a

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20. United States District Court for the District of Maryland's Order dated 6-18-1980, dismissing Case (EEOC case) JH-79-1826 with prejudice by reason of entry of Consent Decree 182a-183a

21. United States Magistrate's Memorandum and Order dated 2-1-1985 in companion case B-84-2465, denying remand of the case to state court, and allowing time to Petitioner to respond Motion to Dismiss 183a-198a

22. United States Magistrate's Report and Recommendation dated 3-28-1985 in Case B-84-2465, recommending dismissal of the case based on res judicata 198a-214a

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24. United States District Court for the District of Maryland's Opinion rendered on 4-11-1986 in Case B-84-2465 218a-242a

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27. Circuit Court for Baltimore City's Order in arbitration confirmation case No. 84-135042/L20441, dated and entered 4-23-1986, dismissing the arbitration confirmation case 249a-250a

28. The proceedings transcript, pages 21-24, in the Circuit Court for Baltimore City, held on 4-23-1986, in Case No. 84-135042/L20441, orally delivering the reasons for dismissing said arbitration confirmation case 250a-254a

29. Court of Special Appeals of Maryland's unreported Opinion in No. 836, filed March 23, 1987, resulting from the appeal of Circuit Court for Baltimore City's Order dated 4-23-1986 in arbitration confirmation case No. 84-135042/L20441 255a-269a

(The judgments or decrees sought to be reviewed and copy of Order denying rehearing.)

30. United Stataes Magistrate's Order dated 8-13-1982, Paper No. 38, in Case No. B-80-0012, which set aside the four (4) Orders of Default for prolixity

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32. United States District Court for the District of Maryland's Order dated 2-15-1985 in Case No. B-80-0012, overruling Petitioner's Exceptions, granting summary judgment to Respondents on 11 of the 16 counts of the Second Amended Complaint (Paper No. 53), otherwise overruling Respondents' Exceptions, and adopting Magistrate's Report and Recommendation dated 2-27-1984 273a-275a

33. United States District Court for the District of Maryland's final Order of Dismissal dated 4-16-1987 in Case No. B-80-0012 275a-277a

34. United States Court of Appeals for the Fourth Circuit's Per Curiam decision dated 7-15-1988 in Appeal No. 87-1078 277a-279a

35. United States Court of Appeals for the Fourth Circuit's denial of rehearing, dated 8-16-1988 in Appeal No. 87-1078 280a-281a

(Other appended materials.)

36. Respondent International Typographical Union's letter to Petitioner, dated 1-10-1978, quoting the Respondent's Bylaws, Article V, Section 43 282a-283a

37. EEOC's Charge of Discrimination form filled by EEOC personnel prior to 8-30-1978 and signed by Petitioner on 8-30-1978 283a-287a

38. Complaint in Case No. JH-79-1826 filed on 9-28-1979 by EEOC in the United States District Court for the District of Maryland, stemming from the Charge of Discrimination form signed by Petitioner on 8-30-1978 287a-295a

39. Consent Decree in Case No. JH-79-1826, signed by EEOC, counsel for Respondent International Typographical Union, and counsel for all other Respondents, which was entered by Honorable Joseph C. Howard on 6-18-1980 295a-302a

40. Petitioner's letter to EEOC director, dated 10-19-1979, stating that relief sought in Case No. JH-79-1826 was inadequate and requesting a letter of right to sue 302a-303a

41. Notice of Right to Sue dated

10-25-1979, issued to Petitioner, which became basis for filing instant case by Petitioner on 1-4-1980 pro se 303a-306a

42. Deposition taken on 2-21-1980 by EEOC from Theodore J. Kees, president of Respondent Baltimore Typographical Union No. 12 in EEOC case JH-79-1826 307a-310a

43. EEOC's letter to Petitioner, dated 7-18-1980, alleging that "...Mr. Singh did contact you sometime in February of 1980 ... On the basis of those discussions, the Commission issued to you a Notice of Right to Sue..." 310a-313a

44. Typographical Journal, September 1980 issue, at page 17, showing Respondent International Typographical Union's Bylaws, Article V, Section 43, as it appeared prior to 8-30-1978 when Petitioner signed EEOC-prepared Charge of Discrimination, and the change caused on that Section 43 as a result of EEOC's Consent Decree in Case No. JH-79-1826 313a-314a

45. Receipt No. 18811 issued on 1-4-1980 to Petitioner by the Clerk's Office of the United States District Court for the District of Maryland, after Petitioner paid filing fee $60.00 and left the copies of his pro se complaint 314a-315a

46. Petitioner's pro se Complaint filed on 1-4-1980 in the instant Case No. B-80-0012, then known as J80-0012 and JH-80-0012 (selected portions only) 315a-325a

47. Petitioner's Second Amended Complaint, Paper No. 53, in the instant Case No. B-80-0012, prepared by counsel and filed on 1-20-1983, on the basis of which the instant Petition is submitted to the instant Honorable Court 325a-345a

48. Defendant A.S. Abell Publishing Company's letter, dated December 2, 1976, to Respondent Baltimore Typographical Union No. 12, which triggered the subject unpublished private arbitration proceedings and the award dated 9-7-1977, issued by the Chairman of the American Arbitration Association, Professor Myron L. Joseph 345a-347a

49. Volume I, front page and pages 5-8, of the arbitration proceedings between Defendant A.S. Abell Publishing Company and Respondent Baltimore Typographical Union No. 12, held on 3-24-1977, where counsel for parties agreed to ignore the then expired 1974-76 contract but be bound by the determination of Professor Myron L. Joseph 347a-352a

50. The Decision and Award, dated 9-7-1977, issued in the subject unpublished private arbitration proceedings by Proffessor Myron L. Joseph 352a-355a

51. Defendant A.S. Abell Publishing Company's letter, dated 9-29-1977, to Respondent Baltimore Typographical Union No. 12, stating that the defendant would not abide by Professor Josseph's arbitration Decision and

Award for the post-December 31, 1976 period of time 355a-357a

52. Petitioner's Trial Exhibit No. 370, i.e., Respondent Baltimore Typographical Union No. 12's Minutes of Stated Meeting held on 10-9-1977, where that respondent estimated loss from the cause that led to the subject arbitration at $50,000.00 as against Defendant A.S. Abell Publishing Company's estimate of $2,455.30 358a-360a

53. Complaint in Case No. N-78-455, filed by counsel for Respondent Baltimor Typographical Union No. in the United States District Court for the District of Maryland, seeking enforcement of the subject arbitration Decision and Award of Professor Joseph, dated 9-7-1977 360a-365a

54. Incentive Payment form presented to Petitioner in July 1978, which Petitioner signed for lack of feasible alternative 365a-367a

55. Defendant A.S. Abell Publishing Company's letter, dated 8-22-1978, to Petitioner, stating "The Sunpapers and Baltimore Typographical Union #12 have reviewed all of the records for the period from December 5, 1976 through December 31, 1976 and have ascertained that you are entitled to ... $246.07 in full compliance with the arbitrator's award" 367a-368a

56. Dismissal in Case No. N-78-455, dated 9-11-1978, filed in the United States District Court for the District of Maryland by counsel for Respondent Baltimore Typographical Union No. 12 368a-369a

57. Letter from National Labor Relations Board, dated 3-23-1984, to Petitioner, in response to Petitioner's search for official documents leading to subject arbitration proceedings 369a-371a

58. NARR in Case 84135042/ L20441 filed by Petitioner in the Circuit Court for Baltimore City after he obtained necessaary offi-

cial documents leading to subject unpublished private arbitration proceedings, wherein he sought confirmation of said arbitration 371a-378a

59. Declaration in Case No. 84135043/ L20442, filed by Petitioner in the Circuit Court for Baltimore City, seeking compensation for damages caused to beneficiaries of the subject arbitration award, stemming from the non-compliance with the award and the non-enforcement of the award 378a-389a

60. Affidavit of Jeffrey P. Ayres, Esq., counsel for Defendant A.S. Abell Publishing Company, dated 6-22-1984, made after Case No. 84135043/ L20442 was removed by him from the said state court to the United States District Court for the District of Maryland and styled as Case No. B-84-2465 389a-395a

61. Arbitration proceedings in the subject arbitration, held on 3-24-1977, pages 48-50, and held on 5-23-1977, pages 18-19, where parties agreed to expand the issues beyond the original limits, and made the arbitrator to consent to that expansion 395a-400a

62. Transcript of Trial Proceedings before Honorable Walter E. Black, Jr., United States District Judge, in Case No. B-80-0012, held on 4-6-1987, pages 31 and 143-145, requesting in regard to Section 301 claims 400a-406a

63. Transcript of Trial Proceedings before Honorable Walter E. Black, Jr., United States District Judge, in Case No. B-80-0012, held on 4-8-1987, pages 11-14 and 89-92, requesting to include

a count for fraud, quasi-contract, conspiracy, misrepresentation and negligent misrepresentation 406a-419a

64. Jointly Proposed Pre-Trial Order of All Parties in Case B-80-0012 filed in the United States District Court for the District of Maryland, (selected portions), requesting a count in regard to negligent misrepresentation, consistency with Labor-Management Reporting and Disclosure Act, compensation for being cause in changing union by-law, and fraud 420a-424a

65. Transcript of Trial Proceedings before Honorable Walter E. Black, Jr., United States District Judge, in Case No. B-80-

0012, held on 4-9-1987, pages 3-27, requesting in regard to inclusion of arbitration matter in the instant case 424a-464a

66. Transcript of Trial Proceedings before Honorable Walter E. Black, Jr., United States District Judge, in Case No. B-80-0012, held on 4-13-1987, pages 32-35 and 100-106 in regard to the actual payment made, the actual award, and whether or not compliance existed 464a-483a

67. Transcript of oral Opinion rendered in Case B-80-

0012 on 4-15-1987 by Judge Walter E. Black who stated, at page 13, that the subject arbitration matter was not in Case B-80-0012 483a-484a

68. Plaintiff's Trial Exhibit No. 319, National Labor Relations Board's letter to Respondents' counsel Bernard W. Rubenstein, Esq., dated December 21, 1977, stating that Mr. Rubenstein's filing with the board was untimely, leading to refusal of a complaint 485a-488a

69. 29 U.S.C.Section 185 (a), (b), (c) & (e) 488a-491a

70. 42 U.S.C. Section 2000e (a), (d), (e)(1), & (f) 491a-494a

71. 42 U.S.C. Section 2000e-2 (c)(2) 494a-495a

72. 42 U.S.C. Section 2000e-3 (a) 495a-496a

73. 42 U.S.C. Section 2000e-5 (f)(1) 496a-500a

74. 42 U.S.C. Section 2000e-10 (a) & (b) 500a-501a

75. 29 U.S.C. Section 411 (a)(1) & (4) 501a-503a

76. 29 U.S.C. Section 412 503a-504a

77. 29 U.S.C. Section 415 504a

78. F.R.Civ.P. Rule 8 (a), (c), (e) & (f) 504a-507a

79. F.R.Civ.P. Rule 12 (a) 507a-509a

80. F.R.Civ.P. Rule 15 (a), (c), & (d) 509a-511a

81. F.R.Civ.P. Rule 18 (a) & (b) 511a-512a

82. Annotated Code of Maryland.
Title 3:
Section 3-223(a) 512a
Section 3-227 512a-513a
Title 5:
Section 5-101 513a-514a

83. 42 U.S.C. 2000e-2 (a) 514a

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

No. 87-1078

FILED

AUG 16 1988

U.S. Court of Appeals

Fourth Circuit

Kondian R. Rajaram,

Plaintiff - Appellant,

v.

International Typographical Union, et al,

Defendants - Appellees,

and

A. S. Abell Publishing Co.,

Defendant.

On Petition for Rehearing with Suggestion for Rehearing In Banc

The appellant's pro se (sic) petition for rehearing and suggestion for rehearing in banc were submitted to this Court. As no member of this Court

or the panel requested a poll on the suggestion for rehearing in banc, and

As the panel considered the petition for rehearing and is of the opinion that it should be denied,

IT IS ORDERED that the petition for rehearing and suggestion for rehearing in banc are denied.

Entered at the direction of Judge Russell, with the concurrence of Judge Widener and Senior Judge Butzner.

For the Court

JOHN M. GREACEN

CLERK

UNPUBLISHED

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

No. 87-1078

KONDIAN R. RAJARAM

Plaintiff - Appellant

v.

INTERNATIONAL TYPOGRAPHICAL UNION;
BALTIMORE TYPOGRAPHICAL UNION NO. 12;
SUNPAPERS CHAPEL OF BALTIMORE
TYPOGRAPHICAL UNION NO. 12;
JACK POIST;
GARY KIDWELL

Defendants - Appellees

and

A. S. ABELL PUBLISHING COMPANY

Defendant

Appeal from the United States District Court for the District of Maryland, at Baltimore. Walter E. Black, Jr., District Judge. (C/A No. 80-12-B)

Submitted: May 24, 1988

Decided: July 15, 1988

Before RUSSELL and WIDENER, Circuit Judges, and BUTZNER, Senior Circuit Judge.

Kondian R. Rajaram, Appellant Pro Se. Bernard Wolf Rubenstein; Brian A. Powers

(ABATO, RUBENSTEIN & ABATO, PA) for Appellees.

PER CURIAM:

Kondian R. Rajaram appeals from the district court's order dismissing his complaint alleging claims under 42 U.S.C. SS 1981, 1985, 1986, 2000e, and 29 U.S.C. SS 185 and 401, et seq. Our review of the record, including the district court's opinions and the magistrate's recommendations, discloses that this appeal is without merit. Accordingly, we affirm on the reasoning of the district court. Rajaram v. International Typographical Union, C/A No. 80-12-B (D. Md. April 15, 1987). We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the Court and argument would not aid the decisional process. Appellees' motion for attorney's fees is denied.

AFFIRMED.

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MARYLAND

(entered April 20 1987)

KONDIAN R. RAJARAM Plaintiff

v.

INTERNATIONAL TYPOGRAPHICAL UNION;
BALTIMORE TYPOGRAPHICAL UNION NO. 12;
(sic);
JACK POIST and
GARY KIDWELL Defendants

CIVIL NO. B-80-0012

O R D E R

Presently pending in the captioned case is Defendants' Motion to Dismiss filed pursuant to Rule 41(b) of the Federal Rules of Civil Procedure. The motion to dismiss was filed after the close of the plaintiff's case in the

nonjury trial of the captioned case. The Court had the benefit of oral argument on behalf of all parties and is satisfied that upon the facts as presented by the plaintiff in his case-in-chief, and upon the law, the plaintiff has shown no right to relief.

In accordance with the oral opinion rendered by the Court on April 15, 1987, IT IS, this 16th day of April, 1987, by the United States District Court for the District of Maryland,

ORDERED;

(1) That the Defendants' Motion to Dismiss BE, and the same hereby IS, GRANTED;

(2) That the Second Amended Complaint (Paper 53) BE, and the same hereby IS, DISMISSED in full WITH PREJUDICE; and

(3) That the Clerk shall mail copies herewith to counsel of record.

(Signature)
Walter E. Black, Jr.

United States District Judge

UNITED STATES DISTRICT COURT

DISTRICT OF MARYLAND

Case No. B80-0012

Baltimore, Maryland

April 15, 1987

KONDIAN R. RAJARAM, Entered

PLAINTIFF, May 1, 1987

-v-

INTERNATIONAL TYPOGRAPHICAL UNION;
BALTIMORE TYPOGRAPHICAL UNION NO. 12;
SUNPAPERS CHAPEL OF
BALTIMORE TYPOGRAPHICAL UNION NO. 12;
JACK POIST,
GARY KIDWELL and
A.S. ABELL PUBLISHING COMPANY,
(sic),

TRANSCRIPT OF ORAL OPINION

BEFORE THE HONORABLE WALTER BLACK, JR.

APPEARANCES:

For the Plaintiff:

EDWARD MAKOWSKI, ESQUIRE

PHILLIP MIZRACH, ESQUIRE

For the Defendants:

BERNARD RUBENSTEIN, ESQUIRE

BRIAN A. POWERS, ESQUIRE

Audio Operator:

VERONICA J. CAMERON

Proceedings recorded by electronic sound recording, transcript produced by transcription service.

J & J COURT TRANSCRIBERS

20 Florister Drive

Trenton, New Jersey 08690

(609) 586-4345/586-2311

COURT CLERK: Please rise. Oh yea, oh yea, oh, (sic) yea. All persons having business before the United States District Court for the District of Maryland draw near and give your atten-

tion. This Honorable Court is now in session. The Honorable Walter E. Black, Jr., presiding.

THE COURT: Good morning.

THE AUDIENCE: Good morning, your Honor.

THE COURT: As I indicated at the end of the trial day yesterday, it was my intention to have the opportunity to review this matter and rule on it this morning and I'm now prepared to do so. I will do it by means of an informal oral opinion, reserving the right to edit that opinion if it's transcribed for any reason, without in anyway changing the result or any type of meaning.

This law suit was filed on January 4, 1980. Its procedural history is extremely complicated and need not be recited here. The case is being heard by this Court as trier of fact and consists

of five of the original sixteen counts of the Second Amended Complaint (Page (sic) 53).

Repeated attempts by the plaintiff to amend the Second Amended Complaint and to reopen claims dismissed long ago were both unsuccessful and sometimes frivolous. A basic summary of the counts being tried is as follows. Counts 5 and 16 alleged discriminatory practices under 42 U.S.C. 2000(E)(2) (sic) of the Civil Rights Act which prohibits labor organizations from discriminating against a union member or from classifying or failing or refusing to refer for employment a union member because of his "race, color, religion, sex or national origin." 42 U.S.C. Section 2000(E)(2)(C)(1) (sic) and (C)(2) (sic).

Count 6 alleges discrimination under 42 U.S.C. Section 2000(E)(3)(A) (sic) of the Civil Rights Act which

prohibits an employer from discriminating against an individual for opposing any unlawful employment practice or for making charges, testifying, assisting or participating in enforcement proceedings brought under the Civil Rights Act.

Counts 10 and 11 are for violations of the Labor Management Reporting and Disclosure Act, and alleged, respectively that the plaintiff was punished for objecting to certain labor practices of the defendants and that the plaintiff was illegally required to spend two years in presenting grievances through union procedures.

The plaintiff in this case, Kondian Rajaram, was born in Indian and immigrated to this country in the 1960's (sic). Having examined the various groups protected by the Civil Rights Act, the Court is satisfied that the

proper characterization of the discrimination alleged in this case is discrimination based on the plaintiff's national origin. The Court also notes in this regard the plaintiff's name, skin color and accent, all factors which support the fact that the plaintiff was of foreign ancestry.

Further, the Court notes that an individual born in India is characterized as a caucasian and therefore the discrimination alleged here cannot be based on the plaintiff's race. The plaintiff is now a citizen of the United States and has made his home in this country.

Early in the 1970's, after completion of four years of technical education and training, the plaintiff became a journeyman in the printing industry. The defendants represent the hierarchy of union organizations and selected of-

ficials within the printing industry; namely the International Typographical Union, the ITU, the Baltimore Typographical Union Number 12, the BUT-12 (sic), the Sunpapers Chapel of the Baltimore Typographical Union Number 12, called the Sunpapers Chapel, Jack Poist, then Chapel Chairman and Gary Kidwell, then Vice-Chairman.

Defendants initially raised a technical argument regarding the exact named defendants in the original charging document but the Court does not find it necessary to address this issue and, in any event, finds that all of the defendants have had proper notice of the charges alleged in this lawsuit.

The case of Rajaram versus ITU, et al., Civil No. B80-0012, was finally heard by this court over seven years after it was filed and over ten years since the first incident of wrong-

doing alleged in the complaint. After a week of often repetitive testimony, including nearly twelve hours of direct testimony of the plaintiff, and after the presentation of often cumulative and irrelevant evidence, the plaintiff rested its (sic) case.

The defendants immediately moved to dismiss the entire action under Federal Rules of Civil Procedure, Rule 41(b). Rule 41(b) provides that a defendant in a case tried without a jury may move for dismissal at the close of the plaintiff's evidence on the ground that upon the facts and teh (sic) law, the plaintiff has shown no right to relief. The court as trier of the facts, may then determine the facts and the law and render judgment against the plaintiff if warranted. Unlike a motion for directed verdict, the court is not required to make any special inferences

in favor of the plaintiff.

Instead, the court is to weigh the evidence presented, resolve any conflicts in it and decide for itselt where the preponderance of evidence lies. 9 Wright & Miller Section 2371 at p. 224. A thorough review of the entire record in this case in combination with the evidence presented to the Court over the past week, convincingly demonstrates to this Court that there is no evidence to support any of the allegations made by the plaintiff against these defendants. As the Court will grant the defendants (sic) motion to dismiss in this case, it must now set fotth its findings of facts and conclusions of law. Federal Rules of Civil Procedure, Rule 52(a).

After becoming a journeyman printer, Rajaram moved to Baltimore, Maryland to seek employment as a proof-

reader. He was hired in 1974 by the A.S. Abell Publishing Company, who was originally named as a defendant in this action, but who was thereafter dismissed for limitations reasons. Though there were no permanent positions with A.S. Abell, Rajaram was hired as a substitute with the understanding that he would work when needed, and eventually move up until a permanent situation became available. When Rajaram was hired, he signed his name in a logbook which established his priority/seniority as among the other hires.

One of the ways in which a substitute could work at A.S. Abell was to take the place, temporarily, of a permanent employee who became ill or was absent from work for any reason. These temporary situatuions (sic) were know (sic) as TF's. Substitutes could be assigned to the TF positions in various

ways. Among the methods of assignment were by direct request of a permanent situation holder or by showing up at a particular shift and then being chosen based on priority or a lottery-type draw system. Each substitute was required by the union laws to show up two or three times a week, in order to maintain their priority.

From 1974 until the summer of 1976, Rajaram worked as a substitute at A.S. Abell without incident. In July or August of 1976, Rajaram became aware of a long-term TF of a permanent employees (sic) named Fleisig. Rajaram thought the TF would become available in the Fall of 1976. By that time, Rajaram had worked his way up the list of priorities so that he was relatively certain that he could claim the Fleisig TF.

In anticipation of the long-term assignment, Rajaram planned a lengthy

trip to his homeland of India. Plaintiff testified that the purpose of the trip was to get married. The Court finds that the plaintiff did, indeed, get married while in India, but the Court also finds that Rajaram may have taken the trip for other purposes as well, for example, to visit a sick relative, and that the union officials reasonably believed the trip included such reasons.

As the trip to India was to last over a month, Rajaram knew that such an absence would jeopardize his priority position and therefore he sought to pay his union dues in advance. Non-payment of dues is the only way a union member can be lawfully expelled from a union and is one of the ways that a member could lose priority status in the typographical union. In this regard, Rajaram approached defendant Kidwell and

requested to pay his dues in advance.

After a few moments (sic) hesitation and some discussion probably heated, Kidwell accepted the dues and issued a receipt to Rajaram. The incidents that are the subject of the discrimination and retaliation counts in this case occurred after Rajaram's return from India but are alleged to stem in part from this dues altercation believed by the Court to be nothing more than a trivial and minor incident between Kidwell and Rajaram.

For the sake of simplification, the Court will address each Count of the Second Amended Complaint in turn beginning with Count 5, which alleges discriminatory actions by the defendants based on plaintiff's national origin. To avoid an immediate dismissal in this case, the plaintiff had to present sufficient evidence to establish a prima

facie case. Absent direct evidence of discriminatory treatment, which clearly is not present in this case, those elements required, the plaintiff in this case to show: (1) that he was a member of the protected class, (2) that he was qualified for the job assignment; (3) that despite his qualifications, he was not given the job assignment and (4) that, after he was by-passed for the job, the assignment remained open or was given to another individual with similar qualifications. See, for example McDonnell-Douglas Corp. v. Green, 411 U.S. 792 (1973); Smith v University of North Carolina, 632 F.2d 316 (4th Cir. 1980).

Assuming that the plaintiff did establish a prima facie case of discrimination, the burden of going forward then falls on the defendants to dispel the inference of discrimination raised

by the plaintiff by demonstrating legitimate and non-discriminatory reasons for its (sic) actions. Citing, McDonnell Douglas, at p. 803.

The plaintiff in turn can rebut by exposing such reasons as pure pretext or subterfuge. Ultimately the establishment of a prima facie case of employment discrimination requires proof by a preponderance of the evidence that the plaintiff was not promoted or dismissed "under conditions which, more likely than not, were based upon impermissible racial considerations." Young v. Lehman, 748 F. 2d. 194, 196 (4th Cir. 1984).

The evidence in the record falls far short of proving either pretext or discrimination. As presented by the plaintiff, the evidence merely supports the existence of a clearly legitimate and non-discriminatory reason for the

by-pass of plaintiff regarding the Fleisig TF.

When the plaintiff returned from India in October of 1976, he returned to work as a substitute for A.S. Abell. He did not apply or claim TF positions that surfaced at that time and instead quietly waited for the Fleisig TF to become available. The Court finds that the defendants' reasonable belief at that time was that Rajaram did not request the TF's for personal reasons.

Throughout this period of time, Rajaram protested night work because of health problems and fatigue due to his trip and necessary readjustment to the United States. There is even some testimony by the union officials that Rajaram had problems sleeping during the day because of a baby crying, though Rajaram subsequently produced evidence that he did not have a baby at that

time.

The Court finds that any discrepancy about plaintiff's position regarding his refusal (sic) work nights or failure to claim the TF's is due to his lack of candor with the union officrs (sic) and not because of any bad faith or fabrication on the defendants (sic) part.

Consequently when the Fleisig TF did became (sic) available in November of 1976, the Court finds that the union officials reasonably believed that Rajaram would not want the TF because it, too, was a night shift and the union officials were not aware that Rajaram had changed his mind in this regard.

Rajaram was not assigned to the TF and it has been stipulated by the defendants that Rajaram was the highest priority substitute and was qualified for the position. Instead, another sub-

stitute, Lorenzo, with lower priority than Rajaram, began work on the Fleisig TF on Sunday, November 4, (sic) 1976. Earlier that day Rajaram vehemently objected to the assignment at a Chapel meeting.

When the mistake was uncovered, the TF was reassigned to Rajaram. Rajaram could not begin work until the following week, however, due to a policy of not taking a substitute off of a TF during the middle of the financial workweek. Rajaram did work at other positions during the week of November 14, but it was established by comparison with the workweek of Lorenzo that Rajaram missed one and perhaps two days of work because of the by-pass, for a maximum loss of less than $120.

It is this by-pass episode the plaintiff specifically contends constitutes an unlawful practice of the de-

fendants by "limiting and depriving the plaintiff's employment opportunities because of his race, color and national origin." The entire circumstances of the incieent (sic) do not bear out such an interpretation. The Court finds that the by-pass was nothing more than an innocent (sic) on behalf of the union officials. The union officials were called to testify during the plaintiff's case and the Court finds credible the explanation of the union officials that they believed Rajaram did not want the night shift TF position. A legitimate and non-discriminatory purpose has been established and the plaintiff has not rebutted it by showing pretext. The Court finds no evidence of discrimination.

Count 5 is couched in broad language and the plaintiff argued during trial that the discriminatory practices

of the defendants under Section 2000 (E)(2), (sic) included not only the by-pass incident, but other situations as well. First, plaintiff alleges that the initial and momentary hesitation of Kidwell to accept an advance payment of dues in August 1976 constituted discrimination based on Rajaram's national origin.

As stated earlier, the Court finds this incident so trivial it hardly bears discussion. Further, the argument that this was the first incident of discrimination alleged by the plaintiff because this was the first the defendants learned of Rajaram's national origin is so silly that the Court need not discuss it. Suffice it to say, that they (sic) Court finds no discrimination regarding the dues incident.

Two other incidents occurring after the by-pass must be given context before

the Court can discuss whether any discriminatory (sic) exists.

Soon after Rajaram began work on then (sic) Fleisig TF, John Banach, an officer of the A.S. Abell Publishing Company sent a letter to the union informing them that various TF positions were being eliminated. The fact that Rajaram's name was not on the list was more likely than not an oversight and was not, in any event, discrimination by the union and the union officials. Other Tf positions were left off the Banach letter as well and, furthermore, the action taken was by the A.S. Abell Company and not these defendants.

When Poist called to verify the letter and seek an explanation on behalf of the union membrers, he was told that all of the TF positions were bing elimnated and Poist took this to mean the Fleisig TF as well. The real reason for

the elimination of TF's, however, is what is crucial here.

A. S. Abell had automated and computerized its company in accordance with new technology in the printing industry and the manpower supplied by the substitute program was just nob (sic) longer needed. The existence of a technologicaal (sic) revolution within the printing industry can hardly constitute discrimination against Rajaram when it equally affected all members situated like Rajaram. The Court notes here that the elimination of the TF positions was in breach of the union contract and the case was taken to arbitration by the union, but that case is not before this Court.

Plaintiff has alleged one final incident against the defendants claimed to constitute a discriminatory limitation and deprivation of plaintiff's em-

ployment opportunities because of his national origin. In January of 1977 through February of 1977, a share of the work agreement was in affect among the union members. The Court remains unsure of how exactly the share of the work agreement operated. Poist testified during the plaintiff's case that the share of the work agreement was set up because of the new technology and consequent lack of work for the union members. It was founded on the idea of unionism or helping your brother or sister member because of the decrease in manpower needs.

Apparently a group of members got together and decided to share the work so that if a substitute worked on a given day he was to give up the right to work the next day unless there were more than enough positions available.

Rajaram was not aware of the share

of the work program until Janjary (sic) 19 when he sought assignment of a temporary position by the lottery method, that is, by drawing a number where high number would be given the assignment. Plaintiff contends that he was not allowed to draw and therefore lost job opportunities notably on that day.

At the outset, the Court finds credible Poist's testimony that as Chapel Chairman he never used the lottery or draw method of assignment. Further, a close examination and comparsion (sic) of the work schedules of all the substiitutes (sic) during the relevant periods in January and February do not reflect a discriminatory method of work assignment.

Rajaram was not affected any more or any less than the other substitutes if, indeed, he was affected at all. Rajaram worked successive days and he

worked a substantial amount during tha (sic) time. Further, the Court finds that the defendants (sic) reasons for instituting the share of the work system are not only legitimate and non-discriminatory, but laudatory in light of the circumstances regarding the new technology and its tragic affect on the union members.

Finally, when Rajaram objected to the share of the work agreement, albeit after he evaluated its effect on his own work schedule, the system was abandoned. The Court finds that the share of the work agreement was neither invented by the defendants to discriminate against Rajaram, nor did it have a discriminatory affect on Rajaram.

For all of the above reasons, Count 5 of the Second Amended Complaint must be dismissed.

Count 6 of the Second Amended Com-

plaint states simply that the defendants discriminated against the plaintiff "because he opposed their unlawful employment practices and policies." The plaintiff alleges, in essence, that the four incidents addressed above were in retaliation for the incidents preceding each one. Obviously, the dues incident was not retaliatory. Plaintiff contends, however, that the job by-pass was in retaliation for plaintiff's insistence upon advance payment of dues and objection to Kidwell's resistence to such payment.

Section 2000(E)(3) (sic) of the Civil Rights Act is couched in terms of discrimination for opposing unlawful employment practice or opposing any unlawful employment practice or for charging, testifying, assisting or participating in any manner in an investigation, proceeding or hearing brought

under the Civil Rights Act. Clearly, the dues incident does not rise to the level of opposing an unlawful employment practice under 2000(E)(3) (sic) and, therefore, the by-pass was not retaliatory.

Furthermore, the Court finds that Kidwell hesitated before accepting payment after explaining to Rajaram that it was difficult to calculate the sum of an advance payment because payment of dues is prorated with the employees (sic) weekly or monthly salary. This fleeting disagreement occurred on the working room floor and not in Kidwell's office and it was inconvenient to accept the dues at that time. Nevertheless, upon Rajaram's insistence the dues were accepted.

The termination of the Fleisig TF while Rajaram occupied it, was not retaliatory because it affected all sub-

stitutes equally and its purpose was to make way for advanced technology and not to retaliate against a single substitute because he earlier objected to being by-passed for a job position that was quickly rectified in any event.

Finally, the Court finds that the share of the work agreement was not in retaliatioln (sic) of any of the preceding three incidents. The dues incident amounted to a forgettable disagreement between Kidwell and Rajaram and the reason underlying the termination of the TF positions is obvious.

In regard to the by-pass, the union officials allegedly responsible for the share of the work agreement were also those who believed that the by-pass incident had been remedied and all but forgotten. The idea that such an elaborate work arrangement was set up to retaliate for Rajaram's objection to the

by-pass is illogical. Once Rajaram was reinstated in the Fleisig TF, no further complaints were made until February 19, 1977, over a month after the share of the work agreement was instituted.

The Court finds that the union officials did not retaliate against Rajaram's objection that they long thought it was resolved. In Ross v. Communications Satellite Corporation, 759 F.2d. 355 (4th Cir. 1985), the Fourth Circuit set forth the principles for determining whether an employee has established a prima facie case of retaliationl. (sic) The three elements include: (1) that the employee engage (sic) in protected activity; (2) that the employer took adverse employment action against the employee and (3) that a causal connectio existed between the protected activity and the adverse action. Citing Ross, at p. 365.

Plaintiff not only failed to establish that the share of the work agreement constituted an adverse employment action against him, but in no way will the evidence support a causal connection between the dues incident, the by-pass, the termination of TF's and the share of the work agreement. Count 6 of the Second Amended Complaint is, accordingly, dismissed against all of the defendants.

Count 16 of the Second Amended Complaint avers that the defendants, and specifically Poist "arbitrartily and unlawfully classified the Sunpapers Chapel substitute employees into groups to further the practice of employment discrimination. (sic) The Court first finds that in regard to the by-pass, there was no classification under any plausible defintion (sic) of that term. And, neither the plaintiff nor the defendants

nor the Court can articulate such a classification. Accordingly, the claim that the by-pass constituted employment discrimination by arbitrary classification of substitute workers, has no merit whatsoever.

Neither could the plaintiff explain to the Court the arbitrary classification of substitutes with regard to the share of the work agreement. Plaintiff initially suggested substitutes were placed into groups based on the day shift, night shift classification. Rajaram, however, worked both day and night, both during the relevant period and before it. Plaintiff suggested that the classification perhaps changed each shift in order to affect Rajaram.

The Court is unable to come up with a classification that the plaintiff, Rajaram, or the other substitutes were arbitrarily placed into it and plaintiff

could not either. Section 2000(E)(2)-(C)(2) (sic) does not purport to ban all discrimination, but only the specific forms enumerated by its provisions, namely, race, color, religion, sex or national origin. See, for example, King v. Seaboard Coast Line Railroad Company, 538 F.2d 581 (4th Cir. 1976).

In the King case drunks were held not to be a classification protected by Title 7 (sic) and in this case a classification into day or night substitutes, if that is the arbitrary classification alleged, is equally not actionable.

Count 16 is symptomatic of the lack of substance in the entire complaint. Seven years after the complaint was filed, the plaintiff could not articulate what was the arbitrary and discriminatory classification that the plaintiff found so offensive. Count 16 will, likewise, be dismissed for failure to

demonstrate a right to relief.

The lack of evidence of any discrimination is forcefully established from the plaintiff's answer to the final question on direct examination in which he expanded for approximately twenty minutes on his complaint against the union, based almost entirely on alleged procedural minimal violations of union work law and mentions discrimination only once, obviously as an after thought.

Apart from the findings above, the Court further finds that the defendant ITU, in contrast to the local unions and its officers, had no contact whatsoever with the various incidents discussed above and should not, under any circumstances, be a named defendant in Counts 5, 6 and 16.

The two remaining causes of action in this case fall under the Labor Man-

agement Reporting and Disclosure Act. 29 U.S.C. Section 401-531. The LMRDA was enacted, inter alia "to eliminate or prevent improper practices on the part of labor organization." Section 401(C).

Count 10 alleges that the defendants abridged the plaintiff's voting rights regarding the share of the work agreement. Section 411 of the LMRDA provides for equal rights and privileges to vote in certain union matters and establishes the right of a union member to express his views regarding union business.

Paramount to a finding that the plaintiff's voting rights were abridged is a finding that there was a vote. Poist testified that there was no such vote and that the share of the work agreement was nothing more than an informal agreement among several of the substitutes. Rajaram testified that

Poist told him that there was a vote but that Rajaram did not believe there was a vote. There is no evidence there was a vote and indeed plaintiff's counsel concedes that that (sic) was no vote as that terms (sic) is commonly defined.

The plaintiff continues to press the fact that a union member has the right to vote at an informal gathering of a minority of workers who determine to share their work for the commendable and altruistic reasons described earlier. The Court, however, finds that there was no vote regarding the share of the work agreement and accordingly, there can be no violation of the voting rights protected by the LMRDA.

The last allegation the plaintiff has alleged is contained in Count 11 of the Second Amended Complaint and states that the plaintiff "was illegally required by all of the defendants to ex-

pend approximately two years in presenting his grievances through union procedures before resorting to administrative or court actions which violated the standard set forth by the Bill of Rights of Members of Labor Organizations. The plaintiff is making reference to Section 411(A)(4) (sic) of the LMRDA which prohibits labor organizations from limiting the right of a meber (sic) to institute an action in court or before an administrative agency, except that the labor organization can require exhaustion of internal procedures not to exceed a four month lapse of time.

There is no question in this case that Section 43 of the Chapel (sic) Laws required a union member to exhaust all of its internal remedies upon penalty of expulsion and that Section 43 did not expressly limit the exhaustion require-

ment to the statutory four montsh. (sic) Though the Court notes the defendants' proffer that the questionable by-law is no longer in existence due to a merger of the ITU with a new union, the issue in this case is whether Rajaram was indeed punished or expelled from the union under Section 43.

The Court can find no case law discussing a claim such as that alleged by Rajaram here. Rajaram attempts to state a cause of action for damages becuase (sic) he followed the union grievance procedures to the end rather than take his suit to a court or administrative agency after four months.

Cases analyzing the validity of a by-law that will expel or fine a member for pursuing his court remedies rather than exhausting his internal rights involve situations where the union member was indeed fined or expelled. Despite

tee (sic) multitude and myriad of actions instituted by Rajaram in various forums, he has never been disciplined or otherwise punished for his legal actions. The local union president, Theodore Kees, who testified during plaintiff's case, stated that never in this history of the union has a member been expelled or otherwise punished in this regard. Indeed, Rajaram remains a member in good standing.

The remedies pursued by Rajaram throughout the union procedures also support the Court's finding that there is no causal action under the LMRDA in this case. At the first level of appeal, Rajaram requested the impeachment of Poist and Kidwell and that Poist and Kidwell be required to make compensation to every TF for damages by their actions. Rajaram also requested that local union President Kees resign from

office.

At the next level of appeal, Rajaram wanted the lower adverse decision declared null, void and corrupt. Again, Rajaram requested impeachment of Poist and Kidwell and Kees. He further requested that the lower appellate board be purged and that it cease to exist. Finally, Rajaram requested compensatory damages of $50,000.

Apart from the monetary damages, the political remedies the plaintiff sought against the union were in no way related to his allegations under the Civil Rights Act. Plaintifff (sic) testified that he merely wanted the union to tell him who was right with regard to the incidents discussed earlier. The relief sought by the plaintiff during the union procedures was not within the province of this Court.

In any event, the Court is satisfied, beyond all doubt that the plaintiff would have pursued his full remedies under the union procedures whether or not the exhaustion requirement existed. The plaintiff's trek through the various appellate procedures provided by the union was meaningful and not perfunctory by any stretch of the imagination.

The Court finds that the litigous (sic) and persistent individual who testified over a period of three days would have certainly availed himself of every legal avenue possible and indeed continues to do so today.

Consequently, any expense incurred by Rajaram throughout the union appellate process would have been incurred by Rajaram in any event. Further, his proffer that his marriage and life was (sic) ruined by this litigation has not

been established by any evidence and the link between his divorce iin (sic) 1983 and this by-law in question, in this particular litigation, is so tenuous as to be non-existent.

Count 11 will be dismissed for failure to prove a right to relief under Section 411(A)(4) of the LMRDA> (sic)

A final word from the Court is appropriate. As a result of certain technological developments in the printing industry, the plaintiff's mean of livelihood was substantially reduced. For over ten years, plaintiff has been litigating the results of the development before the Union at all levels, before the EEOC and before both the federal and state trial and appellate courts.

The sequence of events began with a trivial episode involving an alleged slight by a union official in his reluc-

tance to accept a payment of advance union dues. This escalated to an unparalleled assertion of grievances and claims against both his employer and his union. While the Court has known many sore losers during his lifetime, the plaintiff is unique in that he is best characterized as a sore winner.

His efforts to pay his dues in advance were successful within moments. His objection to the by-pass was recognized and the basis of the grievance was rectified within a week, involving a maximum loss of two days' work or $116.20 in wages. His objection to the share of the work arrangement was recognized and the basis of the grievance was rectified within a month with an additional maximum loss of one day's work, or $58.10 in wages.

Even the plaintiff's objection to the alleged illegal by-law has been met

as a result of the recent union merger. Nevertheless, the plaintiff, with the enthusiastic assistance of his counsel continues to occupy the attention of at least five courts in a total distortion of our system of justice.

Plaintiff has alleged in this case that his life has been destroyed, as indeed it has, not by any acts of the defendants but by his own all-consuming battle against unfounded conspiracies. I implore the plaintiff to get on with his life and to abandon this never ending vendetta against his employer and his union, if not for the sake of this nations's (sic) and Maryland's judicial system, then for the sake of his own health and peace of mind.

And, I implore the plaintiff's coulnsel (sic) to abandon their quixotic quest for victory which has led them to act as counsel in a court where they are

not qualified to practice under the Rules of court and to drag everyone involved in this trial, including defense counsel, court personnel and the Court itself, down to their level.

Counsel, I will enter an order in conformity with this ruling.

COURT CLERK: Please rise. This Honorable Court now stands in recess.

* * * * * * * *

I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

9/9/87
Date

(Signature)
ELAINE HOWELL

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MARYLAND

KONDIAN R. RAJARAM Plaintiff

vs. (entered April 3, 1980)

BALTIMORE TYPOGRAPHICAL UNION

NO. 12 Defendant

CIVIL ACTION NO. JH-80-0012

ORDER OF DEFAULT

It appearing from the records that the Summons and Complaint were properly served upon the above named defendant on 6 February 1980 and that the time for said defendant to plead or otherwise defend expired on 29 February 1980 and that said defendant has failed to plead or otherwise defend as directed in said Summons and as provided by the Federal Rules of Civil Procedure.

Therefore, upon the request of the plaintiff, and pursuant to Rule 55 of the Federal Rules of Civil Procedure, it is ORDERED that the default for want of answer or other defense by said defendant is entered this 3rd day of April, 1980.

PAUL R. SCHLITZ

CLERK

By (Signature)
Deputy Clerk
Louis B. Curran

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MARYLAND

KONDIAN R. RAJARAM Plaintiff

vs. (entered April 3, 1980)

SUNPAPERS CHAPEL OF BALTIMORE TYPO-GRAPHICAL UNION NO. 12 Defendant

CIVIL ACTION NO. JH-80-0012

ORDER OF DEFAULT

It appearing from the records that the Summons and Complaint were properly served upon the above named defendant on 7 February 1980 and that the time for said defendant to plead or otherwise defend expired on 3 March 1980 and that said defendant has failed to plead or otherwise defend as directed in said Summons and as provided by the Federal Rules of Civil Procedure.

Therefore, upon the request of the plaintiff, and pursuant to Rule 55 of the Federal Rules of Civil Procedure, it is ORDERED that the default for want of answer or other defense by said defendant is entered this 3rd day of April, 1980.

PAUL R. SCHLITZ

CLERK

By (Signature)
Deputy Clerk
Louis B. Curran

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MARYLAND

KONDIAN R. RAJARAM Plaintiff

vs. (entered April 3, 1980)

JACK POIST

Defendant

CIVIL ACTION NO. JH-80-0012

ORDER OF DEFAULT

It appearing from the records that

the Summons and Complaint were properly served upon the above named defendant on 8 February 1980 and that the time for said defendant to plead or otherwise defend expired on 3 March 1980 and that said defendant has failed to plead or otherwise defend as directed in said Summons and as provided by the Federal Rules of Civil Procedure.

Therefore, upon the request of the plaintiff, and pursuant to Rule 55 of the Federal Rules of Civil Procedure, it is ORDERED that the default for want of answer or other defense by said defendant is entered this 3rd day of April, 1980.

PAUL R. SCHLITZ

CLERK

By (Signature)
Deputy Clerk
Louis B. Curran

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MARYLAND

KONDIAN R. RAJARAM Plaintiff

vs. (entered April 3, 1980)

GARY KIDWELL

Defendant

CIVIL ACTION NO. JH-80-0012

ORDER OF DEFAULT

It appearing from the records that the Summons and Complaint were properly served upon the above named defendant on 6 February 1980 and that the time for said defendant to plead or otherwise defend expired on 29 February 1980 and that said defendant has failed to plead or otherwise defend as directed in said Summons and as provided by the Federal Rules of Civil Procedure.

Therefore, upon the request of the plaintiff, and pursuant to Rule 55 of the Federal Rules of Civil Procedure, it is ORDERED that the default for want of

answer or other defense by said defendant is entered this 3rd day of April, 1980.

PAUL R. SCHLITZ

CLERK

By (Signature)
Deputy Clerk
Louis B. Curran

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

KONDIAN R. RAJARAM

vs. (entered August 13, 1982)

INTERNATIONAL TYPOGRAPHICAL UNION; and BALTIMORE TYPOGRAPHICAL UNION NO. 12; and SUNPAPERS CHAPEL OF BALTIMORE TYPOGRAPHICAL UNION NO. 12; and JACK POIST and GARY KIDWELL

CIVIL NO. B 80-0012

O R D E R

Following a status conference and hearing held today before me at which Mr. Rajaram appeared in person and Mr. Rubenstein, on behalf of all defendants,

it is hereby ORDERED, this 13th day of August, 1982:

1. That the defaults heretofore entered against the defendants BE, and the same hereby ARE, set aside, pursuant to FED. R. CIV. P. 55(c), for good cause having been shown; the good cause con-sisting of the prolixity of the com-plaint, its failure to set forth a short statement of the claim, and, in the interests of justice, the defendants may have a meritorious defense;

2. That defendants' Motion to Dis-miss the Compalint (sic) for failure to comply with FED. R. CIV. P. 8(a)(2) and (3), BE, and the same hereby IS, GRANTED, with leave of court to file an amended complaint within 45 days of today, to relate back pursuant to FED. R. CIV. P. 15;

3. That no further discovery in the case will be had until further order of

court; and

4. That the Clerk of Court mail copies of this Order to plaintiff and to counsel for the defendants.

(Signature)
Frederic N. Smalkin
United Stataes Magistrate

UNITED STATES DISTRICT COURT
244 U.S. COURTHOUSE
101 W. LOMBARD STREET
BALTIMORE, MD 21201-2691

FREDERIC N. SMALKIN
UNITED STATES MAGISTRATE

FTS TELE: 922-3840
TELE: (301) 962-3840

December 9, 1982

Phillip Mizrach, Esquire
1746 Eastern Avenue
Baltimore, MD 21231

Bernard W. Rubenstein, Esquire
10 Light Street, Suite 2400
Baltimore, MD 21202

Re: Rajaram v. ITU, etc.
Civil No. B 80-0012

Gentlemen:

I have considered plaintiff's

motion for reconsideration and modification, filed September 10, 1982. In view of the fact that plaintiff has filed an amended complaint, and seeks to file a second amended complaint, there would be no need to reconsider so much of my order of August 13, 1982 as dismissed the original complaint.

With regard to setting aside the defaults entered against the defendants, I found in my order of August 13, 1982, adequate good cause for setting aside the defaults pursuant to FED. R. CIV. P. 55(c). Upon reconsideration, I am still of the view that the defaults should have been set aside.

Therefore, by this letter ruling, I am denying plaintiff's motion for reconsideration and modification, filed September 10, 1982.

Very truly yours,

(Signature)
Frederic N. Smalkin

FNS/skp

cc Ronald rosenberg, esquire
Court File

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MARYLAND

KONDIAN R. RAJARAM

vs.

INTERNATIONAL TYPOGRAPHICAL UNION; and BALTIMORE TYPOGRAPHICAL UNION NO. 12; and SUNPAPERS CHAPEL OF BALTIMORE TYPOGRAPHICAL UNION NO. 12; and JACK POIST and GARY KIDWELL; A.S. ABELL PUBLISHING COMPANY

CIVIL NO. B 80-0012

(entered October 20, 1983)

MAGISTRATE'S REPORT AND RECOMMENDATION

I.

Plaintiff, Kondian R. Rajaram, is a member of defendant Union Interna-

tional Typographical Union (ITU), Baltimore Typographical Union No. 12 (BTU-12) and Sunpapers Chapel of Baltimore Typographical Union No. 12 (Sun Chapel). As a union member, he worked as a contract substitute employee on a casual basis for defendant A. S. Abell Publishing Co. (Abell) until July 1978, when substitute work was eliminated. Plaintiff alleges that the elimination of this substitute work was motivated by intentional discrimination on the parts of all of the defendants.

Plaintiff filed his initial complaint, pro se, on January 4, 1980, naming ITU, BTU-12, Sun Chapel, Poist, and Kidwell as defendants. (Paper #1). On September 13, 1982, plaintiff obtained counsel to represent him, and an amended complaint was filed, with leave of court, on September 24, 1982. (Paper #46). Finally, on January 20, 1983,

plaintiff filed a second amended complaint that named, for the first time, Abell as a defendant. (Paper #53). On February 28, 1983, Abell moved for dismissal or, in the alternative, for summary judgment. (Paper #58). By previous order of Judge Black, dated July 27, 1982, the case had been referred to me in accordance with Local Rule 80. The pending motions in the case were all heard on October 12, 1983.

II.

Plaintiff alleges that Abell violated plaintiff's rights under Title VII of the Civil Rights Act of 1964, 42 U.S.C. S 2000e et seq., by aiding and assisting the other named defendants in:

(1) maintaining a provision in the Union bylaws that required plaintiff to seek internal Union remedies before he was allowed to resort to a discrimination charge under Title VII;

(2) maintaining a provision in the Union bylaws which forced plaintiff to seek internal Union reme-

dies at considerable expense to plaintiff and that had the effect of prohibiting plaintiff from exercising his Title VII remedies for an indefinite period of time;

(3) limiting plaintiff's employment opportunities by giving a job to a white worker, of lower priority status than plaintiff, which was due plaintiff (contrary to the provisions of 42 U.S.C. S 2000e-2(a)(1)); and

(4) discriminating against plaintiff because of the latter's opposition to Abell's hiring practices (contrary to the provisions of 42 U.S.C. S 2000e-3(a)).

The Court has determined that these claims under Title VII must be dismissed because plaintiff failed to exhaust his administrative remedies with the EEOC as required under 42 U.S.C. S 2000e-5.

Plaintiff claims that the District Court "has jurisdiction to hear a complaint even though the matter has not been presented to the EEOC, where the failure to present the matter is inadvertent" (Paper #59), and he cites Sharma v. Opportunities Industrializa-

tion Center, 342 F. Supp. 209 (E.D. Wis. 1972), in support of this contention. However, in Sharma, the court was faced with the issue of whether plaintiff's failure to comply with the exhaustion requirements under Title VII precluded his action under 42 U.S.C. S 1981. The court held that plaintiff could proceed with his S 1981 action in lieu of his Title VII remedy if there was reasonable excuse for plaintiff's failure to exhaust his Title VII remedies. Thus, Sharma is entirely beside the present point.

Plaintiff also cites Movement for Opportunity and Equality v. General Motors Corp., 622 F.2d 1235 (7th Cir. 1980), in support of his contention that the exhaustion of administrative remedies is not required. However, the court in that case stated that there are strict requirements for the plaintiff to

(1) file a charge with the EEOC and 2) (sic) receive the right to sue letter from the EEOC and act on it within the requisite time. These requirements can only be relaxed when the plaintiff's failure to sue is due to misleading acts by the EEOC, the employer, or the union. Here, there is no evidence that the EEOC, Abell, or the unions misled plaintiff into believing that he had a complaint only against the unions, rather than against the unions and Abell together. In that plaintiff has never filed an EEOC claim against Abell, he is absolutely barred from proceeding under Title VII against that company. Bickley v. Univ. of Md., 527 F. Supp. 174, 179 (D.Md. 1981).

Plaintiff has had actual knowledge of his Title VII rights since August 30, 1978, yet he has never filed a discrimination claim against Abell with the

EEOC. The courts do not treat the charges made to the EEOC as strictly as they would common law pleadings, in that the EEOC can expand the charges made against a specific defendant based on its investigation. EEOC v. General Electric Co., 532 F.2d 359 (4th Cir. 1976). However, the courts do require that a specific defendant be named in the EEOC charge. See Freeman v. Schultz, 468 F.2d 120 (D.C. Cir. 1972) (An oral complaint against an employer with the EEOC that only triggered an informal investigation is insufficient exhaustion of administrative remedies under Title VII.). Because plaintiff has never filed administrative charges against Abell with the EEOC, and thus never afforded Abell the opportunity to assert its defendants (sic) in the administrative forum, plaintiff's Title VII claims should be dismissed.

III.

Plaintiff also claims against Abell under 42 U.S.C. S 2000e-10, alleging that Abell failed to post a proper notice of the employees' rights under Title VII. S 2000e-10 provides:

> (a) Every employer, employment agency, and labor organization, as the case may be, shall post and keep posted in conspicuous places upon its premises where notices to employees, applicants for employment, and members are customarily posted a notice to be prepared or approved by the Commission setting forth excerpts, from or, summaries of, the pertinent provisions of this subchapter and information pertinent to the filing of a complaint.
>
> (b) A willful violation of this section shall be punishable by a fine of not more than $100 for each separate offense.

The issue here is whether a private cause of action for damages can be implied under this section. To determine whether a private case of action is implicit in a statute, several factors must be analyzed. First, plaintiff must

be a member of the class for whose benefit the statute was enacted. Second, there must be a legislative intent to create such a remedy. Third, it must be consistent with the underlying purpose of the statute to imply such a remedy for the plaintiff. Finally, it must be ascertained whether the cause of action is traditionally relegated to state law, or whether it would be appropriate to infer a cause of action based solely on federal law. See Cort v. Ash, 422 U.S. 66, 78 (1975). Here, although plaintiff is a member of the class for whom the statute was enacted, the legislative history indicates that the statute's purpose is to allow the EEOC to prepare or approve notices that set forth excerpts of the title, and to require employers and unions to post these notices in conspicuous places. An employer's or union's willful failure to

comply results in fines. H.R. REP. NO. 914 88th Cong., 2nd Sess., reprinted in 1964 U. S. CODE CONG. & AD. NEWS, 2355, 2407. Thus, the purpose of the statute is only to provide the EEOC with regulatory power (via fines) over the employers and the unions, rather than to create a private remedy for the employees. The Court simply cannot conceive, especially given the elaborate civil remedial provisions of the same subchapter of Title 42 of which S 2000e-10 is a part, that Congress ever intended a private right of action to arise from simple failure to post notices. None of the other factors in the Cort v. Ash analysis is persuasive otherwise. For this reason, plaintiff's claim under S 2000e-10 must be dismissed.

IV.

Plaintiff also alleges that Abell

violated plaintiff's civil rights under 42 U.S.C. SS 1985, 1986, and 1981, respectively, by: (1) conspiring with the other named defendants to interfere with plaintiff's civil rights; (2) failing to prevent the other named defendants from violating plaintiff's civil righs (sic) under S 1985, although allegedly Abell knew of these wrongs and had the power to stop them; and (3) denying plaintiff his right to equal benefits under the law.

However, plaintiff's claims under SS 1981, 1985, and 1986 must be dismissed because they are barred by the statute of limitations. The statute of limitations for an action under S 1981 is three (3) years. McNutt v. Duke Precision Dental and Orthodontic Laboratories, Inc., No. 82-1179 (4th Cir. Jan. 17, 1983). The limitations period for actions under S 1986, as stated in

the statute itself, is one (1) year. The statute of limitations for actions under S 1985 is three (3) years, with the cause of action accruing when the plaintiff knows or has reason to know of his injury: "It is the awareness of the facts giving rise to the cause of action, not the awareness that the illegality of the action is conclusively provable that begins the running of the statute of limitations." Lewis v. Clark, 534 F. Supp. 714, 716 (D.Md. 1982). Plaintiff was aware of a possible cause of action as early as August 30, 1978, when he filed a discrimination claim with the EEOC against defendants ITU, BTU-12, and Sun Chapel (Paper #1); however, plaintiff failed to assert his claim against Abell until almost five years later (January 20, 1983).

Plaintiff asserts, however, that he

is entitled to a tolling of the statute of limitations under either the doctrine of fraudulent concealment or the doctrine of continuing violations. The doctrine of fraudulent concealment is set forth in Davis v. Edgemere Finance Co., 523 F. Supp. 1121 (D.Md. 1981). A statute of limitations is tolled when the defendant, by fraudulent means, keeps the potential plaintiff in ignorance of the fact that plaintiff has a cause of action. Plaintiff must prove:

> "(1) fraudulent concealment by the party raising the statute together with (2) the other party's failure to discover the facts which are the basis of his cause of action despite (3) the exercise of due diligence on his part." Since this means of avoiding the statute was created by courts of equity, we adopted their requirement that the facts necessary to show these elements should be distinctly pleaded .... In Stearns v. Page, 48 U.S. (7 How.) 818, 829, 12 L.Ed. 928 (1849), the Court explained the reasons for these essential elements as follows:
>
> "A complainant, [to avoid the

> statute of limitations,] must state in his bill distinctly the particular act of fraud, misrepresentation, or concealment,--must specify how, when, and in what manner, it was perpetrated. The charges must be definite and reasonably certain, capable of proof, and clearly proved.... And especially must there be distinct averments as to the time when the fraud, mistake, concealment, or misrepresentation was discovered, and what the discov-ery is, so that the court may clearly see, whether, by the exercise of ordinary diligence, the discovery might not have been before made."

Davis, 523 F. Supp. at 1125 (footnote omitted).

Plaintiff has alleged that Abell and the other named defendants "participated in involved, convoluted transactions" which resulted in the denial of plaintiff's civil rights; that the "complexity of occurrence were such that" plaintiff should not have been expected to "comprehend the nature of involvement of the various parties" and that plaintiff was unaware of potential remedies

"because facts were concealed and transactions hidden"; plaintiff asserts that he has "actively pursued" all remedies to the best of his ability. These contentions are unsupported by any specific factual allegations, as required under the Davis test. The plaintiff's counsel was unable to articulate specific facts pertaining to the alleged fraudulent concealment at the October 12 hearing, other than to refer to Mr. Rajaram's speculations as to the existence of a conspiracy between Abell and the unions. This speculation is clearly insufficient under Davis.

Plaintiff asserts, also, that he was unable to discover Abell's involvement in these discriminatory transactions until November 1982, when fully advised by new counsel, and therefore was unable previously to obtain knowledge of his injury and the cause of his

injury. Thus, he claims that the statute of limitations was tolled until November, 1982 under the standards set forth in United States v. Kubrick, 444 U.S. 111 (1979). In Kubrick, the plaintiff sued under the Federal Tort Claims Act for the VA's negligent administration of an antibiotic that caused a permanent hearing loss. Although plaintiff sought care for the hearing loss shortly after the original treatment and was told that the medication could have caused his hearing impairment, it was not until three years later that he was advised by a physician that the medicine was negligently administered. It was then that plaintiff instituted suit. Although the Court recognized that a cause of action did not accrue until the plaintiff was aware of his injury and its cause, plaintiff did not have to be aware that the doctor's conduct was

legally blameworthy before the cause of action accrued. The Court noted that it was "unconvinced that for statute of limitations purposes a plaintiff's ignorance of his legal rights and his ignorance of the fact of his injury or its cause should receive identical treatment," Kubrick, 444 U.,S. at 122, and it held that plaintiff's cause of action was barred by the two (2) year statute of limitations.

In this case, plaintiff's reliance in Kubrick is misplaced. The rule in Kubrick has been held inapplicable outside of medical malpractice situations. See Wilkinson v. United States, 677 F.2d 998, 1002 (4th Cir.), cert. denied, 103 S.Ct. 209 (1982). Also, plaintiff has equated the "cause of injury" discussed in Kubrick with legal liability, rather than, as in Kubrick, connecting the cause of injury with a mechanical "but

for" event. Mr. Rajaram was aware of his injury (abridgement of his civil rights) and the cause of his injury (the defendants' alleged failure to comply with seniority priorities, etc.) as early as August 30, 1978. The claim that he was ignorant of his legal right to sue Abell along with the other named defendants is not sufficient to toll the running of the statute of limitations. As the Court noted in Kubrick, once the plaintiff is aware of his injury and the cause of his injury, the onus is upon him to seek professional advice; to hold otherwise would defeat one purpose of the statute of limitations of preventing stale claims from being raised. See Kubrick, 444 U.S. at 118.

Plaintiff further contends that he is entitled to a tolling of the statute of limitations under the doctrine of

continuing violations. However, a "continuing violation is occasioned by continual unlawful acts, not continual ill effects from an original violation." Ocean Acres v. Dare Co. Board of Health, Nos. 82-1458, 82-1489 (4th Cir. May 12, 1983). Assuming, arguendo, that there was discrimination by Abell that constituted a series of acts during the employer-employee relationship, this would not allow plaintiff to sue Abell in 1983, because his employment with the company ended in 1978; plaintiff would have had to have sued within three (3) years of his discharge in order to invoke the continuing violations remedy. See Williams v. Norfolk & W. Ry. Co., 530 F.2d 539 (4th Cir. 1975). Because plaintiff has failed to show that he met the requirements under either the doctrine of fraudulent concealment or the doctrine of continuing violations, he is

time-barred from raising his claims under 42 U.S.C. SS 1981, 1985, and 1986.

V.

Plaintiff has alleged that Abell breached a collective bargaining agreement, in violation of S 301 of the Taft Hartley Act, 29 U.S.C. S 185. This claim, however, must be dismissed because it is barred by the six (6) month statute of limitations applicable to S 301 breach of contract actions. DelCostello v. International Brotherhood of Teamsters, 51 U.S.L.W. 4693 (1983).

VI.

Plaintiff further alleges that Abell engaged in unfair labor practices in violation of S 8(a) of the Taft-Hartley Act, 29 U.S.C. S 158(a), by its participation with the other named defendants in discriminatory hiring and tenure practices. This claim must be dismissed because this Court does not

have subject matter jurisdiction. Section 8(a) claims are within the exclusive jurisdiction of the NLRB. While the District Court can have jurisdition over a S 301 claim concurrent with the NLRB's jurisdiction over a S 8(a) claim, see Smith v. Evening News Association, 371 U.S. 195 (1962); Newport News Shipbuilding & Drydock Co. v. Peninsula Shipbuilders Assn., 646 F.2d 117 (4th Cir. 1981), a S 8(a) claim can only be brought before the NLRB.

VII.

Finally, plaintiff has raised a state law contract claim against Abell, alleging that: "The plaintiff was not compensated for the years of service rendered." State law claims are appropriate for the Court's determination if they form a separate but parallel ground for relief sought in a substantial claim based on federal law. However, where,

as here, the federal claims are insubstantial, the federal court should not assume jurisdiction over the state claim: "Needless decisions of state law should be avoided both as a matter of comity and to promote justice between the parties, by procuring for them a surer-footed reading of applicable law." United Mine Workers v. Gibbs, 383 U.S. 715, 726 (1966). Therefore, this state claim should also be dismissed.

VIII.

For the reasons stated above, I respectfully recommend that, upon the expiry of time allowed in Local Rule 82 and FED. R. CIV. P. 72 for taking exception hereto, an order be entered granting defendant Abell's motion to dismiss.

(Signature)
Frederic N. Smalkin
United States Magistrate

Dated: October 18th, 1983

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MARYLAND

KONDIAN R. RAJARAM

vs.

INTERNATIONAL TYPOGRAPHICVAL UNION; and BALTIMORE TYPOGRAPHICAL UNION NO. 12; and SUNPAPERS CHAPEL OF BALTIMORE TYPOGRAPHICAL UNION NO. 12; and JACK POIST and GARY KIDWELL; A.S. ABELL PUBLISHING COMPANY

CIVIL NO. B 80-0012

entered November 10, 1983

O R D E R

Upon consideration of the Magistrate's Report and Recommendation dated October 18, 1983, and upon the expiry of time allowed in Local Rule 82 and FED. R. CIV. P. 72 for taking exception hereto, IT IS, this 6th day of November, 1983, by the United States District Court for the District of Maryland, ORDERED:

1. That the Magistrate's Report and Recommendation BE, and the same hereby IS ADOPTED;

2. That Defendant Abell's motion to dismiss BE, and the same hereby IS, GRANTED; and

3. That the Clerk of Court mail copies of this Order to counsel for the parties.

(Signature)
Walter E. Black, Jr.
United States District Judge

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MARYLAND

KONDIAN R. RAJARAM (entered on February 28, 1984)

vs

INTERNATIONAL TYPOGRAPHICAL UNION, ET AL.

CIVIL NO. B 80-0012

MAGISTRATE'S REPORT AND RECOMMENDATION

I.

Plaintiff, Kondian R. Rajaram, a native of India and now a naturalized American citizen, is a member of the defendant Unions, viz., International Typographical Union (ITU), Baltimore Typographical Union No. 12 (BTU-12), and Sunpapers Chapel of Baltimore Typographical Union No. 12 (Sun Chapel). As a Union member, he worked as a contract substitute employee for the A. S. Abell Publishing Company from August, 1974 until July, 1978, when substitute work was eliminated. In January, 1980, plaintiff filed a complaint in this Court, alleging discriminatory actions on the part of the Unions and two officers of Sun Chapel, Jack Poist and Gary Kidwell.

The case is now before the Court on plaintiff's amended motion for summary judgment (Paper No. 122); the cross-motions for summary judgment filed by

defendants BTU-12, Sun Chapel, Poist and Kidwell (Paper No. 124) and ITU (Paper No. 127); and the parties' supplemental memoranda. By previous order of Judge Black, dated July 27, 1982, the case was referred to me in accordance with Local Rule 80. The above-mentioned motions were heard on February 7, 1984. The plaintiff's claims, set forth in the amended complaint in 16 counts, arise under a constellation of jurisdictional bases. For ease of discussion, this Court has organized its analysis according to the jurisdictional bases for plaintiff's various claims.

II.

Plaintiff alleges that all of the defendants violated his rights under Title VII of the Civil Rights Act of 1964, 42 U.S.C. S 2000e et seq. (1976, as amended) by:

1. Maintaining illegal provisions in the Union by-laws that

a. abridged plaintiff's Title VII rights (Plaintiff's affidavit 1 paragraphs 11, 12, 13, 15, 17); and

b. forced plaintiff to incur considerable personal expense in pursuing his internal Union remedies (Plaintiff's affidavit, paragraphs 29, 30);

2. Illegally by-passing plaintiff for a substitute position in November, 1976, in favor of a white worker with lower priority (Plaintiff's affidavit, paragraphs 8, 9);

3. Instituting an illegal "share the work" agreement in January and February, 1977, which caused plaintiff to lose employment opportunities (Plaintiff's affidavit paragraph 10);

4. Refusing to accept prepayment of plaintiff's Union dues in 1976 (Plaintiff's affidavit, paragraph 8); and

5. Eliminating, in December, 1976, the position for which plaintiff had first priority, in retaliation against plaintiff's complaints (Plaintiff's affidavit, paragraphs 9, 14, 18, 19, 20).

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1 Plaintiff's affidavit is attached to Paper No. 122.

With respect to plaintiff's first

claim, concerning illegal provisions in the Union by-laws, this Court is of the opinion that the Title VII action is barred because plaintiff is bound by the consent agreement entered into among the EEOC, ITU, and Sun Chapel. (Paper No. 127, Ex. 4). Plaintiff originally raised this charge with the EEOC in August, 1978. (Paper No. 127, Exs. 7, 8). The EEOC, determining that there was reasonable cause to believe that the by-laws violated plaintiff's Title VII rights, invited the parties to conciliate. When that effort failed, the EEOC instituted suit in this Court against ITU and Sun Chapel and invited plaintiff to intervene, pursuant to 42 U.S.C. S 2000e-5(f)(1). (Paper No. 127, Ex. 2). Plaintiff refused to do so. Subsequently, ITU and Sun Chapel entered into a consent agreement with the EEOC in which the Unions agreed to amend

their by-laws, publish these amendments, and forbear from retaliatory discrimination against any complaining worker. (Paper No. 127, Ex. 4). EEOC v. Sunpaper Chapel of BTU-12, et al., No. JH-79-1286 (sic) (D.Md. June 18, 1980). No provision was made in this consent agreement to compensate plaintiff for the considerable personal expense incurred in pursuing his Union remedies under the illegal by-laws.

Because plaintiff was not a party to the consent agreement, he now argues that he is not bound by it and can recover compensation from the Unions. Under the statutory scheme of 42 U.S.C. S 2000e-5(f)(1), a charging party has an unqualified right to intervene in the EEOC's lawsuit. If he wishes to participate in or reject any settlement negotiated by the EEOC, he may protect himself by intervening. However, the

Fourth Circuit has decided that, under the statutory language of S 2000e-5(f)(1), if a charging party chooses not to intervene, then he will be held to have placed the conduct of the litigation entirely in the hands of the EEOC and to have expressed a conclusive willingness to be bound by the outcome. Adams v. Proctor & Gamble Mfg. Co., 697 F.2d 582, 583 (4th Cir. 1983). In the instant case, plaintiff undoubtedly wishes, with hindsight, that he had intervened in the EEOC action and pursued recovery of his expenses in that manner. But, as the holding in Adams v. Proctor & Gamble Mfg. Co. makes clear, plaintiff cannot now litigate the matter before this Court, because he is bound by the consent decree, and because the EEOC simply has no statutory authority to issue a right-to-sue letter to a non-intervenor, once the EEOC has, itself,

commenced litigation.

However, contrary to defendant ITU's assertions, plaintiff's second, third, and fourth claims are not barred by the prior consent agreement. Although plaintiff filed these three charges with the EEOC in August, 1978, they were dismissed by the Commission on the merits in November, 1978 (See Paper No. 127, Ex. 8), and plaintiff was issued a right-to-sue letter nearly one year later, in October, 1979. (Paper No. 1, Ex. 3). As long as the suit is brought timely, as was the case here, a charging party may institute a court action despite the fact that the EEOC previously determined that the charges were without merit and therefore made no attempt to secure voluntary compliance. McDonell Douglas Corp. v. Green, 411 U.S. 792, 798-99 (1973). Adams v. Proctor & Gamble Mfg. Co. does not bar

the suit, because the pendency of EEOC litigation does not deprive that agency of statutory authority to issue right-to-sue letters with regard to dismissed claims.

On the merits of the second and third claims, concerning the job by-pass and "share the work" agreement, plaintiff alleges that defendants' actions resulted in disparate treatment of plaintiff. He asserts that the defendants were motivated by a discriminatory attitude toward his national origin and the desire to retaliate against him for his complaints against the Unions. To establish a *prima facie* case of disparate treatment under Title VII, plaintiff must show that he was treated less favorably than others in the same situation because of his race, color, religion, sex, or, as is alleged in this case, national origin. *International*

Brotherhood of Teamsters v. United States, 431 U.S. 324, 335 n.15 (1977); see also McDonnell Douglas Corp. v. Green, 411 U.S. at 802. A prima facie case of disparate treatment could also be made by showing that the defendants retaliated against plaintiff for the latter's complaints to the Union. See Avon v. Sampson, 547 F.2d 446, 449 (9th Cir. 1976); 42 U.S.C. S 2000e-3(a). Proof of discriminatory motive on the defendant's part is critical, although in some situations it can be inferred from the mere fact of differences in treatment. International Brotherhood of Teamsters v. United States, 431 U.S. at 335 n.15. Once the plaintiff succeeds in establishing a prima facie case, the burden shifts to the defendant "to articulate some legitimate, non-discriminatory reason for the employee's rejection." McDonnell Douglas Corp. v.

Green, 411 U.S. at 802. Defendant must show a non-discriminatory reason, but does not have to show that it was actually motivated by this proffered reason. Texas Department of Community Affairs v. Burdine, 450 U.S. 248, 254 (1981). The burden then reshifts to the plaintiff to show that defendant's proffered reason is pretextual only, and that defendant was actually motivated by a discriminatory animus. Id., 450 U.S. at 256.

In the instant case, this Court is of the opinion that plaintiff has presented triable issues on his second and third claims concerning the job by-pass and "share the work" agreement. With regard to the second claim, plaintiff has shown--and defendants do not dispute --that he was first in priority for a substitute position that was awarded to a white (American) worker with less sen-

iority. Defendants have asserted a non-discriminatory justification--they assumed plaintiff was uninterested in day work, based on his prior preferences, and they therefore gave the job to the highest priority worker who requested day work (see Keys [sic] affidavit attached to Paper No. 124, paragraph 7)--that plaintiff has challenged as a pretextual. This raises a genuine dispute as to material fact that, under FED. R. CIV. P. 56, requires denial of the parties' motions for summary judgment on this issue. See Cole v. Cole, 633 F.2d 1083, 1092 (4th Cir. 1980).

Similarly, with regard to his third Title VII claim, plaintiff has shown that the "share the work" agreement--voted on only by the days substitutes, not all of the substitutes--had an adverse impact on the workers with the most seniority, including plaintiff, who

was senior proofreader. Of particular importance is plaintiff's allegation--not answered by defendants--that plaintiff was not notified of the voting date and thus not afforded an opportunity to participate in the formation of this agreement. Defendants have asserted a non-discriminatory justification for the agreement--a desire to provide an opportunity for all substitutes to work as often as possible--that plaintiff has labeled as pretextual. This again raises a genuine dispute as to material fact under FED. R. CIV. P. 56, which must be heard at trial.

However, this Court is of the opinion that plaintiff's fourth claim, concerning the prepayment of his Union dues, fails to establish a prima facie case of disparate treatment. By plaintiff's own admission, his request to prepay his Union dues was in fact ac-

cepted--albeit after "strenuous insistence." The matter is simply damnum sine injuria. (Plaintiff's affidavit, paragraph 8).

Plaintiff's final Title VII claim, that his civil rights were violated by the retaliatory elimination of substitute positions in December, 1976, is barred because plaintiff failed to exhaust his administrative remedies regarding that claim with the EEOC, as required under 42 U.S.C. S 2000e-5. That statute contains strict requirements that plaintiff file a charge with the EEOC, receive a right-to-sue letter, and act upon that letter timely. These requirements can only be relaxed when the plaintiff's failure to follow this procedure is due to misleading acts by the EEOC, an employer, or a union--none of which is alleged in plaintiff's affidavit. Plaintiff's failure to file a

claim with the EEOC thus bars his Title VII suit on this issue. Bickley v. University of Maryland, 527 F. Supp. 174, 177 (D.Md. 1981).

Therefore, for the reasons stated above, the parties' motions for summary judgment on the Title VII claims should be denied in part and granted in part, as indicated in the aforegoing discussion. Specifically, summary judgment should be granted for defendants as to Counts (sic) I, and part of Count VI 2 of the amended complaint, and otherwise denied for all parties on Counts V, VI (in part), and XVI.

III.

Plaintiff also alleges a Title VII claim against BTU-12 and Sun Chapel, pursuant to 42 U.S.C. S 2000e-10, based on the

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2 An enumeration of the Counts in plaintiff's amended complaint and

> recommended dispositions of the pending motions with reference thereto are contained in Appendix I.

Unions' alleged failure to post notices regarding grievance procedures available to Union members. (Plaintiff's affidavit, paragraph 17). However, as was noted in the Magistrate's Report and Recommendation of October 18, 1983 (Paper No. 107), which was adopted by the Court on November 10, 1983 (Paper No. 113), no private cause of action for damages can be implied under this section. Therefore, plaintiff's motion for summary judgment under S 2000e-10 should be denied, and defendants' cross-motion should be granted, as to Count VII of plaintiff's amended complaint.

IV.

Plaintiff further alleges that all of the defendants violated his right to equal treatment under the law, pursuant to 42 U.S.C. S 1981, by:

1. Refusing to accept advance payment of plaintiff's Union dues in 1976;

2. Illegally by-passing plaintiff for a substitute position in November, 1976 (Plaintiff's affidavit, paragraphs 8, 9);

3. Retaliating against plaintiff in December, 1976 for his complaints by eliminating the job for which plaintiff had first priority (Plaintiff's affidavit, paragraphs 9, 14, 18, 19, 20); and

4. Forcing plaintiff to participate in an illegal "share the work" agreement during January and February, 1977 (Plaintiff's affidavit, paragraph 10).

Plaintiff's first three claims, involving the dues payment dispute, job by-pass, and subsequent elimination of substitute positions, occurred in 1976. These three claims are therefore barred by the statute of limitations, which is three years for claims brought under Section 1981. McNutt v. Duke Precision Dental and Orthodontic Laboratories, Inc., 698 F.2d 676, 679 (4th Cir. 1983). These are discrete claims, arising from

discrete incidents, and are not continuous in force or effect. Thus, they are time-barred.

Turning to the merits of plaintiff's fourth claim under Section 1981, which is not barred by the statute of limitations, plaintiff must first show that there was discrimination against him on account of race. This rule is grounded in the constitutional and legislative history of Section 1981, which was enacted to enforce the scope of the Thirteenth Amendment. Congress was clearly given the power "to determine what are the badges and the incidents of slavery, and the authority to translate that determination into effective legislation." Jones v. Alfred H. Mayer Co., 392 U.S. 409, 440 (1968). Thus, discrimination based on sex, religion, or national origin is not actionable under Section 1981. See Patel v.

Holley House Hotels, 483 F. Supp. 374, 383 (S.D.Ala. 1979); Woods v. New York, 469 F. Supp. 1127 (S.D.N.Y.), aff'd., 614 F.2d 1293 (2d Cir. 1979); National Association of Government Employees v. Rumfeld, 413 F. Supp. 1224 (D.D.C. 1976), aff'd., 556 F.2d 76 (D.C. Cir. 1977). Second, plaintiff must show a "purposeful" intent to discriminate on the defendant's part. General Building Contractors Assn. v. Pennsylvania, 458 U.S. 375, 389 (1982). Third, plaintiff must show that the discriminatory action occurred in connection with an activity enumerated in Section 1981--in this case, the enforcement of an employment contract. See Johnson v. Railway Express Agency, Inc., 421 U.S. 454 (1975). In the instant case, plaintiff's claim under Section 1981 is not actionable; by plaintiff's own concession, made by his counsel at the hearing held on February

7, 1984, plaintiff's claims in this case are based on discrimination on account of national origin, and, perhaps, skin tone, but not race.

Therefore, plaintiff's motion for summary judgment on all of his Section 1981 claims should be denied, and defendants' cross-motions granted, as to Count IV of plaintiff's amended complaint.

V.

Plaintiff asserts that all of the named defendants violated his civil rights under 42 U.S.C. S 1985(3) by concurring in an agreement to end his employment in December, 1976, in retaliation for his complaints. (Plaintiff's affidavit, paragraph 14). The statute of limitations for actions under Section 1985 is three years, with the cause of action accruing when the plaintiff knows or has reason to know of his injury.

Lewis v. Clark, 534 F. Supp. 714, 716 (D.Md. 1982). Arguably, plaintiff was aware of a cause of action in December 1976, when the substitute positions were abolished. If so, his Section 1985(3) actions is barred by the statute of limitations.

However, even if plaintiff were unaware of a possible cause of action until August, 1978, when he filed charges with the EEOC, plaintiff must still prove that there was: (1) a conspiracy, (2) to deprive him of equal protection of the laws, (3) with an overt act by one of the conspirators in furtherance of the conspiracy, (4) resulting in injury to plaintiff or his property or the deprivation of one of his rights or privileges. Griffin v. Breckenridge, 403 U.S. 88, 102-03 (1971). In addition, there must be some racial or other class-based discrimina-

tory animus behind the conspirators' actions. Id., 403 U.S. at 102 n.10; Hughes v. Ranger Fuel Corp., Division of Pittston Co., 467 F.2d 6, 10 (4th Cir. 1972). In the instant case, plaintiff has made no allegations to prove the existence of a conspiracy, beyond his conclusory assertions that the defendants "consulted" and "concurred in an agreement" to deprive him of his civil rights. Pleading conspiracy under Section 1985(3) requires at least minimum factual support of the existence of a conspiracy. In the absence of such specific allegations, and in the presence only of conjecture (even when asserted under oath), this claim cannot stand. See Yarbrough v. Illinois Dept. of Mental Health, 538 F. Supp. 414 416 (D.Ill., 1982).

Plaintiff also contends that his rights under 42 U.S.C. S 1986 were vio-

lated by the fact that "[n]one of the defending parties prevented, helped to prevent nor tried to prevent violations mentioned in [plaintiff's] Complaint [pursuant to S 1985(3)], about which they had been notified." (Plaintiff's affidavit, paragraph 16). However, the statute of limitations for actions under Section 1986, as stated in the statute itself, is one year; therefore, plaintiff's claims under Section 1986 cannot now be raised, since he failed to file suit until January 4, 1980. Thus, plaintiff's motion for summary judgment on his Section 1985(3) and 1986 claims should be denied, and defendants' cross-motions granted, as to Counts II and III, respectively, of plaintiff's amended complaint.

VI.

Plaintiff claims that the defendant Unions breached the collective bargain-

ing agreement and duty of fair representation, in violation of Section 301 of the Taft-Hartley Act, 29 U.S.C. S 185(a), by:

1. By-passing plaintiff for a substitute position in November, 1976, for which he was first in priority (Plaintiff's affidavit, paragraphs 8, 9);

2. Eliminating all substitute jobs in December, 1976 (Plaintiff's affidavit, paragraphs 9, 14, 18, 19, 20);

3. Participating in the illegal "share the work" agreement in January and February, 1977 (Plaintiff's affidavit, paragraph 10);

4. Negotiating in bad faith with the employer in 1978, thus allowing the permanent elimination of all substitute positions (Plaintiff's affidavit, paragraphs 14, 21, 22, 25); and

5. Forcing plaintiff to accept the buy-out payment, following the elimination of the substitute positions. (Plaintiff's affidavit, paragraphs 22, 23).

All of these claims, however, are barred by the six-month statute of limitations applicable to Section 301 causes

of action. DelCostello v. International Brotherhood of Teamsters, ___ U.S. ___, 103 S.Ct. 2281 (1983). Plaintiff urges this Court not to apply the DelCostello rule retroactively in this case, because of the equities allegedly involved. However, the Fourth Circuit has clearly stated that the six-month limitations rule established in DelCostello for violations of contract/breach of duty of fair representation cases should be applied retroactively. Murray v. Branch Motor Express Co., No. 82-1202 (4th Cir. Dec. 20, 1983). The rule in murray is, in this Court's judgment, unaffected by the equities of the particular case. Therefore, plaintiff's motion for summary judgment under Section 301 should be denied, and defendants' cross-motions should be granted, as to Count VIII of plaintiff's amended complaint.

VII.

Plaintiff further alleges that the defendants violated his rights under the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA), 29 U.S.C. S 401 et seq., by punishing him for objecting to Union practices. In particular, plaintiff asserts that defendants violated his rights by:

1. Refusing to accept advance payment of his Union dues in 1976, in violation of Section 411(a)(1) (Plaintiff's affidavit, paragraph 8);

2. By-passing plaintiff for a substitute position for which he had first priority, in violation of Section 411(a)(1) and (2) (Plaintiff's affidavit, paragraphs 8, 9);

3. Failing to notify the Union members concerning the provisions of the LMRDA, in violation of Section 415;

4. Maintaining an illegal clause in the Union by-laws, thereby forcing plaintiff to pursue internal Union remedies that exceeded the four-month statutory limit, in violation of Section 411(a)(4) (Plaintiff's affidavit, paragraphs 11, 12, 13, 14, 17);

5. Participating in the "share the

work" agreement for two months in 1977, in violation of plaintiff's voting rights contained in Section 411(a)(1) (Plaintiff's affidavit, paragraph 10);

6. Eliminating all substitute positions in July, 1978, and subsequently failing to seek work for plaintiff, in violation of Section 411(a)(5) (Plaintiff's affidavit, paragraphs 9, 14, 18, 19, 20);

7. Disciplining plaintiff by all of the above actions without providing him wih (sic) formal charges, a reasonable time in which to prepare a defense, or a full and fair hearing, in violation of Sections 411(a)(5) and 529.

This Court is of the opinion that the first two claims, involving the dues dispute and job by-pass, are barred by the statute of limitations. The LMRDA does not contain an express statute of limitations, so the courts must look to the most analogous state statute of limitations. Auto Workers v. Hoosier Cardinal Corp., 383 U.S. 696, 704 (1966); See Berard v. General Motors Corp., 493 F. Supp. 1035, 1043 (D.

Mass.), aff'd., 657 F.2d 261 (1st Cir. 1980), cert. denied, 451 U.S. 987 (1981). Under Maryland law, a civil action must be filed within three years of its date of accrual, unless otherwise specified by statute. MD. CTS. & JUD. PROC CODE ANN. S 5-101 (1980 Repl. Vol.). Because the Maryland statute does not specifically provide for any cause of action analogous to the LMRDA, Section 5-101 controls. Both of plaintiff's claims arose in 1976, but he did not file this action until January, 1980; therefore, these claims are time-barred.

In addition, plaintiff's third claim, concerning the failure of the Union officials to notify the members of LMRDA provisions, is simply not meritorious. A prerequisite to recovery under Section 415 is that a member ask the officers to inform the membership of the

LMRDA provisions; the duty is not self-actualizing. See Broomer v. Schultz, 239 F. Supp. 699, 705 (E.D.Pa. 1965), aff'd., 356 F.2d 984 (3d [sic] Cir. 1966). In addition, if that request is denied, the complaining member must first exhaust his internal Union remedies. Wiglesworth v. Teamsters Local Union No. 592, 552 F.2d 1027, 1031 (4th Cir. 1976), cert. denied, 431 U.S. 955 (1971). In the instant case, plaintiff has presented no evidence, by affidavit or otherwise, to indicate that he requested disclosure of the LMRDA provisions by the Unions or that he raised this issue with the Unions through his various grievances. Therefore, his Section 415 claim is not actionable.

However, plaintiff's fourth claim, that the Union by-law provisions regarding grievance procedures violated his rights under Section 411(a)(4), is ac-

tionable. The statute clearly states that unions may not require exhaustion of remedies if exhaustion requires more than four months to complete. Under the Union grievance procedures with which plaintiff was forced to comply (on penalty of losing his Union membership), final internal appeal had to be made to ITU at its annual convention. Only if a Union member filed his claim within the four months immediately prior to the annual convention could the Union by-laws comply with Section 411(a)(4). A simple look at the calendar demonstrates that such fortuitous filing would rarely occur. In fact, in plaintiff's case, he was forced to exhaust internal Union remedies over a fifteen month period (from June, 1977 through August, 1978). See Plaintiff's affidavit, paragraph 10 and Paper No. 129, Exs. 7(a)-7(m). Defendants argue that no private right of

action is implied in Section 411(a)(4). However, the language of Section 411(a)(4), read in combination with Section 412, clearly provides for the right to bring a civil action in a federal district court. See Eisman v. Baltimore Regional Joint Board of Amalgamated Clothing Workers of America, 352 F.Supp. 429, 434 (D.Md. 1972), aff'd., 496 F.2d 1313 (4th Cir. 1974); Parks v. International Brotherhood of Electrical Workers, 314 F.2d 886, 925 (4th Cir. 1963).

Also, plaintiff's fifth claim, concerning the abridgement of his voting rights, is actionable under Section 411(a)(1). Every member of a labor organization has equal rights and privileges to participate in the deliberations and voting on union business, subject to reasonable rules and regulations in the union's by-laws and constitution. In the instant case, plaintiff alleges that

he was not given an opportunity to vote on the "share the work" agreement, a claim that defendants do not dispute; at the hearing held on February 7, 1984, counsel for BTU-12, et al. conceded plaintiff's contention that only day substitutes voted on this agreement. The reason for the plaintiff's non-voting is still in dispute. Although the phrase "equal right to vote" in Section 411(a)(1) is not self-defining, if a partucular Union member is prohibited from casting his ballot entirely, it is a patent denial of his equal right to vote. See Black v. Transport Workers Union of America, AFL-CIO, 454 F. Supp. 813, 821 (S.D.N.Y.), aff'd., 594 F.2d 851 (1st Cir. 1978). Here, there is a genuine issue of material fact with regard to why plaintiff did not vote on this agreement.

In plaintiff's sixth and seventh

claims, he alleges that the Unions employed improper disciplinary procedures against him, in violation of Sections 411(a)(5) and 529. "Discipline," as used in these sections, refers to retaliatory actions that affect a union member's rights or status within the union. Finnegan v. Leu, 456 U.S. 431, 437 (1982). Plaintiff asserts that the elimination of the substitute positions in December, 1976, was in retaliation against his complaints filed with the Union. However, plaintiff has failed to allege any facts that would tend to indicate retaliation on the Unions' part. The first collective bargaining agreement ended in December, 1976. Although the employer, A. S. Abell, agreed to continue the terms of that collective bargaining agreement until a new contract was ratified, it refused to recognize the expired collective bargaining

agreement provisions concerning substitute work positions; counsel for BTU-12, et al., indicated at the hearing that this refusal affected eight substitute positions. The Union challenged the employer's decision, and, under an arbitration award, it won a lump sum settlement of approximately $1,500 for each substitute worker involved. There is no indication that plaintiff was not informed of these developments, and he concedes that he accepted the lump-sum award. The adequacy vel non of the award is immaterial here. In light of the fact that there is no evidence from plaintiff to show that the loss of substitute work was based on a retaliatory motive, his sixth and seventh claims are not actionable. Therefore, as indicated above, summary judgment should be granted for defendants as to Count X (in part), XII, XIII and XIV of plain-

tiff's amended complaint, and otherwise denied for all parties as to Counts X (in part) and XI.

VIII.

In plaintiff's final claim, he alleges that the defendants breached their f fiduciary duty by failing to obtain permanent or continuing substitute employment for plaintiff after the termination of the December, 1976 collective bargaining agreement. In addition, plaintiff seeks compensation for his years of service to the Union, under the theories that (1) his work as a substitute provided a service to the Union by protecting permanent job-holders' positions, and (2) his grievance, which led to the elimination of illegal by-law provisions, protected the other Union members. These claims are predicated on a quasi-contract theory, based on the equitable doctrines of unjust enrichment

and quantum meruit, and are asserted under the rubric of pendent jurisdiction. United Mine Workers v. Gibbs, 383 U.S. 715 (1966).

In order to establish a claim based on quasi-contract, it must be shown that: (1) a benefit was conferred on the defendants by plaintiff; (2) defendants appreciated or knew of the benefit; and (3) the acceptance or retention of the benefit by defendants, without payment for its value, would be inequitable. Everhart v. Miles, 47 Md. App. 131, 422 A.2d 28, 31 (1980). In the instant case, plaintiff did not confer any benefit upon defendants that was not contemplated in the written contract. He was hired as a proofreader substitute and compensated for the hours that he worked. Also, despite plaintiff's contention that he was promised rights not contained in his contract--specifically,

permanent employment--there is simply no sufficient showing of facts to generate a triable issue on any quantum meruit theory. Plaintiff paid his union dues, which is the only "benefit" he conferred on the Unions. In turn, they did what they agreed to do by express contract. There simply has been no "unjust enrichment" of the Unions attributable to anything Mr. Rajaram did for them. The plaintiff's theory is novel, but too ethereal to support a cause of action.

For these reasons, plaintiff's motion for summary judgment on this claim should be denied and defendants' motions granted, as to Counts IX and XV of plaintiff's amended complaint.

IX.

For the reasons stated herein, I respectfully recommend that, upon the expiry of time allowed in Local Rule 82 and FED. R. CIV. P. 72 for taking excep-

tion hereto, an order be entered denying in part and granting in part the parties' motions for summary judgment, as enumerated in Appendix I.

(Signature)
Frederic N. Smalkin
United States Magistrate

Dated: February 27th, 1984

APPENDIX I

Count	Jurisdiction	Recommended Disposition	R/R Text Ref. (Part)
I. Union by-laws in violation of Title VII	Title VII, 42 U.S.C. S 2000e-2	Plaintiff's motion denied; Defendants' motions granted. No trial necessary.	II.
II. Conspiracy to deprive plaintiff of his right to equal protection of the law	42 U.S.C. S 1985(3)	Plaintiff's motion denied; Defendants' motions granted. No trial necessary.	V.

III. Failure to prevent S 1985 violations	42 U.S.C. S 1986	Plaintiff's motion denied; Defendants' motions granted. No trial necessary.	V.
IV. Deprivation of Plaintiff's right to equal protection of the law	42 U.S.C. S 1981	Plaintiff's motion denied; Defendants' motions granted. No trial necessary.	IV.
V. Bypass of Plaintiff for employment due to his national origin	Title VII, 42 U.S.C. S 2000e-2	All parties' motions denied. Trial necessary.	II.
VI. Discrimination against Plaintiff for his opposition to the Defendants' employment practices	Titile VII, 42 U.S.C. S 2000e-3		
	1. job bypass	All parties' motions denied. Trial necessary.	II.
	2. "share the work" agreement	All parties' motions denied. Trial necessary.	II.
	3. dues	Plaintiff's	II.

	payment dispute	motion denied; Defendants' motion granted. No trial necessary.	
	4. elimination of substitute jobs	Plaintiff's motion denied; Defendants' motions granted. No trial necessary.	II.
VII. Failure to post provisions of Civil Rights Act	Title VII, 42 U.S.C. S 2000e-10	Plaintiff's motion denied; Defendants' motions granted. No trial necessary.	III.
VIII. Breach of Contract; Breach of Duty of Fair Representation	S 301 of the Taft-Hartley Act, 29 U.S.C. S 185(a)	Plaintiff's motion denied; Defendants' motions granted. No trial necessary.	VI.
IX. Breach of the Fiduciary Duty to Plaintiff	Common Law Quasi-Contract	Plaintiff's motion denied; Defendants' motions granted. No trial necessary.	VIII.

X. Punishment of Plaintiff for his objections to employment practices	LMRDA, 29 U.S.C. S 411(a) (1) & (2)		
	1. abridgement of Plaintiff's voting rights on the "share the work" agreement	All parties' motions denied. Trial necessary.	VII.
	2. elimination of substitute jobs	Plaintiff's motion denied; Defendants' motions granted. No trial necessary.	VII.
	3. job bypass	Plaintiff's motion denied; Defendants' motions granted. No trial necessary.	VII.
	4. dues payment dispute	Plaintiff's motion denied; Defendants' motions granted. No trial necessary.	VII.

XI. Illegal provisions in Union by-laws	LMRDA, 29 U.S.C. S 411 (a)(4)	All parties' motions denied. Trial necessary.	VII.
XII. Improper discipline procedures against Plaintiff	LMRDA, 29 U.S.C. S 411(a)(5)	Plaintiff's motion denied; Defendants' motions granted. No trial necessary.	VII.
XIII. Failure to post provisions of LMRDA	LMRDA, 29 U.S.C. S 415	Plaintiff's motion denied; Defendants' motions granted. No trial necessary.	VII.
XIV. Improper disciplining of Plaintiff	LMRDA, 29 U.S.C. S 529	Plaintiff's motion denied; Defendants' motions granted. No trial necessary.	VII.
XV. Failure to compensate Plaintiff for services rendered	Common Law Quasi-Contract	Plaintiff's motion denied; Defendants' motions granted. No trial necessary.	VIII.

XVI. Employment Discrimination by arbitrary classification of substitute workers	Title VII, 42 U.S.C. S 2000e-2		
	1. job bypass	All parties' motions denied. Trial necessary.	II.
	2. "share the work" agreement	All parties' motions denied. Trial necessary.	II.

UNITED STATES DISTRICT COURT
208 U.S. COURTHOUSE
101 W. LOMBARD STREET
BALTIMORE, MD 21201-2691

FREDERIC N. SMALKIN
UNITED STATES MAGISTRATE

TELE: (301) 962-3840
FTS TEL: 922-3840

March 20, 1984 (entered 3-22-1984)

Edward J. Makowski, Esquire
1746 Eastern Avenue
Baltimore, MD 21231

Re: Rajaram v. ITU, et al.
Civil No. B 80-0012

Dear Mr. Makowski:

I have received and reviewed your

request for reconsideration of my Report and Recommendation of February 27, 1984. Although, in large measure, your request simply restates arguments that I fully considered, yet rejected, there are several points you raised that should specifically be addressed, in the interests of thoroughness.

First, in Part II of my Report and Recommendation, I determined that plaintiff's Title VII claim concerning illegal provisions in the Union by-laws was barred because plaintiff is bound by the consent agreement among the EEOC, ITU, and sun Chapel. Adams v. Proctor & Gamble Mfg. Co., 697 F.2d 582 (4th Cir. 1983) holds that if a charging party chooses not to intervene in an EEOC action, then he will be held to have placed tne conduct of the litigation entirely in the hands of the EEOC and to have expressed a conclusive willingness

to be bound by the outcome. 697 F.2d at 583. The statutory scheme requiring both exhaustion and the vigorous pursuit of rights at the administrative level is meant to encourage active efforts, by all parties involved, to settle the dispute at the administrative level. Plaintiff's actual intent and personal opinions regarding the lack of efficacy of the EEOC procedures and the "weakness of the Commission" cannot be used to circumvent this statutory scheme. Adams clearly places an onus on the charging party to pursue his claim vigorously and to guard his rights at all levels, not simply in the forum that he chooses. For this reason, plaintiff is clearly bound by the consent decree as to the defendants ITU and Sun Chapel.

However, as you correctly note, defendants BTU-12, Poist, and Kidwell were not parties to the consent agree-

ment. This fact has, though, no determinative effect. The Title VII claim concerning the Union by-law provisions cannot be asserted here because plaintiff failed to exhaust his administrative remedies with the EEOC pursuant to 42 U.S.C. Section 2000e-5. Plaintiff's charge with the EEOC named, as discriminating parties, only Sun Chapel and ITU; he never filed a charge against BTU-12, Poist, or Kidwell. It is true that the courts do not hold EEOC charges

to the tests of common law pleadings, in that the EEOC can expand the charges made against a specific defendant based on its investigation. EEOC v. General Electric Co., 532 F.2d 359 (4th Cir. 1976). However, the courts do require that a specific defendant be named in

the EEOC charge. See Freeman v. Schultz, 468 F.2d 120 (D.C. Cir. 1972). Because plaintiff never filed administrative charges against BTU-12, Poist, and Kidwell with the EEOC, and thus never afforded them an opportunity to assert their defenses in the administrative forum, plaintiff's Title VII claim concerning the Union by-law provisions is not now actionable in this forum.

Second, in Part II of my Report and Recommendation, I determined that plaintiff's Title VII claim concerning the retaliatory elimination of substitute positions was barred because plaintiff failed to exhaust his administrative remedies. Plaintiff seeks to avoid the exhaustion requirement, alleging that his failure to follow the statutory procedures was due to misleading acts by the Union (BTU-12), i.e., publishing a story in its bulletin stating that the

matter had been settled by arbitration and that awards would soon be made. Contrary to plaintiff's allegations, however, this statement by the Union was not misleading; when made, it was true. When A. S. Abell decided not to recognize the substitute positons after the collective bargaining agreement ended in December, 1976 (in apparent disregard of an oral agreement to continue the terms and conditions of employment until a new contract was finalzed), the Union filed for and won arbitration on this issue; the affected employees were to be paid the difference between what they earned and what they would have earned had they been permitted to retain their temporary situations up to January 1, 1977. (Keys [sic] Affidavit, p. 6.). After this award, the newspaper refused to reinstate the temporary situations. Despite grie-

vances and a charge filed with the NLRB, the Union could not enforce compliance with the arbitration awards, and the NLRB refused to issue a complaint and dismissed the charge because there was no arbitration clause in the contract. Id. Because there was no misleading act on the part of the defendants, plaintiff cannot avoid the exhaustion requirements of Title VII, and thus his "retaliatory elimination of substitute positions" claim is not actionable.

Third, in Part V of my Report and Recommendation, I determined that plaintiff's claims under 42 U.S.C. Sections 1985 and 1986 were not actionable. First to clarify a fact discussed in my

Report and Recommendation, you are correct in noting that, although substitute

positions were not officially recognized by A. S. Abell after December, 1976, substitutes continued to work after that month, and the substitute positions were not formally abolished until the adoption of the July, 1978 collective bargaining agreement. Second, my analysis of plaintiff's Section 1985 claim was inadvertently limited to allegations cvoncerning the end of substitute work. Conceivably, plaintiff could also raise this claim with respect to the job bypass, "share the work" agreement, and illegal provisions in the Union by-laws. However, regardless of the factual bases of plaintiff's Section 1985 claim, there is a threshold requirement that a conspiracy existed, and there must be at least minimal factual support for the existence of a conspiracy. In the absence of specific allegations this claim cannot stand. See Yarbrough v.

Illinois Department of Mental Health, 538 F. Supp. 414, 416 (D. Ill. 1982). Plaintiff's conclusory asseverations that the defendants "consulted" and "concurred in an agreement" and that they each failed to advise plaintiff of his grievance rights (beyond the Union grievance procedures) are simply insufficient factual bases to support the allegation of a conspiracy.

In addition, under the explicit terms of Section 1986, if there is no Section 1985 claim, there cannot be a claim under Section 1986. Therefore, my prior decision concerning plaintiff's Section 1986 claim is also unchanged.

Fourth, in Part VII of my Report and Recommendation, I determined that your claims under the LMRDA, 29 U.S.C. Sections 411(a)(5) and 529, concerning allegations that the Unions employed improper disciplinary procedures against

plaintiff, were not actionable. As a factual clarification, you are correct in noting that plaintiff did not limit the basis of his complaint to the elimination of substitute positions. Plaintiff also asserts that he was illegally disciplined by the job by-pass, "share the work" agreement, and the Unions' continued failure to seek work for him after the adoption of the July, 1978 collective bargaining agreement. As was noted in my Report and Recommendation, at p. 15, all claims stemming from incidents in 1976 are barred by the three year statute of limitations. With respect to the post-1976 claims, "discipline" as a term of art refers to retaliatory actions that affect a union member's rights or status within the union. Finnegan v. Leu, 456 U.S. 431, 437 (1982). Plaintiff has not alleged any facts in support of his contention

that the defendants' actions were

retaliatory in nature. The "share the work" agreement may have been implemented contrary to the Unions' standard operating procedures, but there is no evidence to show that the agreement was a retaliatory act aimed at the plaintiff. Similarly, plaintiff may feel it unfair that he trained for four years for a job that was eliminated with the end of the 1976 collective bargaining agreement. However, the evidence indicates that, rather than attempting to retaliate against the plaintiff, the Union tried to preserve all of the workers' rights as they existed under the expired collective bargaining agreement. (See Keys [sic] affidavit, pp. 6-8). You corrctly note that the $1,500 received by plaintiff did not

represent payment under the arbitration award (as I had mistakenly referred to it in my Report and Recommendation, at p. 19), but rather was a severance payment for the substitutes whose jobs were eliminated by the July, 1978 collective bargaining agreement. However, it is still a fact that the Union negotiated this payment for the substitutes --including the plaintiff--and that plaintiff accepted this money. Thus, my conclusion remains unchanged, i.e., that there is no evidence to show that the loss of substitute work was the result of any retaliatory act by the Union against the plaintiff.

In summation, I have amended my factual findings as provided herein. However, the recommended dispositions, as set forth in my Report and Recommendation, remain the same. With respect to the remaining contentions raised in your

recent filing, but not expressly treated above, there is, in my judgment, no merit in your position, for the reasons discussed adequately in my Report and Recommendation. I understand that you intend to file additional material for Judge Black's consideration, and that he will prescribe the schedule to govern such filing. A copy of this letter will be filed in the official court file, and will serve to supplmeent (sic) my Report and Recommendation of February 27, 1984.

Very truly yours,

(Signature)
Frederic N. Smalkin

FNS/skp
cc Honorable Walter E. Black, Jr.
Bernard W. Rubenstein, Esquire
Ronald Rosenberg, Esquire
Court File

UNITED STATES DISTRICT COURT
208 U.S. COURTHOUSE
101 W. LOMBARD STREET
BALTIMORE, MD 21201-2691

FREDERIC N. SMALKIN
UNITED STATES MAGISTRATE

TELE: (301) 962-3840
FTS TEL: 922-3840

March 23, 1984

Edward J. Makowski, Esquire
1746 Eastern Avenue
Baltimore, MD 21231

Re: Rajaram v. ITU, et al.
Civil No. B 80-0012

Dear Mr. Makowski:

After my letter to you dated March 20, 1984, wasd sent, a recent Fourth Circuit case came to my attention that definitively settled one issue raised in your request for reconsideration.

In my letter, I stated that, because plaintiff never filed charges with the EEOC against defendants BTU-12, Poist, and Kidwell on the illegal Union by-law provision issue, plaintiff is precluded from raising a Title VII claim against these defendants now. In support of this decision, I referred to

Freeman v. Schultz, 468 F.2d 120 (D.C. Cir. 1972).

The Fourth Circuit Court of Appeals has recently decided this matter in the same manner, by holding that "[t]he jurisdictional requisite for filing a Title VII suit in district court is that the plaintiff must have first filed a complaint with the EEOC against the party sued." Moon v. Howard County Board of Education, No. 83-2045, The Daily Record, March 22, 1984 (4th Cir. Feb. 24, 1984) (emphasis added).

Therefore, my decision that this particular Title VII claim is not actionable, remains unchanged.

Very truly yours,

(Signature)
Frederic N. Smalkin

FNS/skp

cc Honorable Walter E. Black, Jr.
Bernard W. Rubenstein, Esquire
Ronald Rosenberg, Esquire
Court File

UNITED STATES DISTRICT COURT
208 U.S. COURTHOUSE
101 W. LOMBARD STREET
BALTIMORE, MD 21201-2691

FREDERIC N. SMALKIN
UNITED STATES MAGISTRATE

TELE: (301) 962-3840
FTS TEL: 922-3840

March 27, 1984

Phillip Mizrach, Esquire
1746 Eastern Avenue
Baltimore, MD 21231

Re: Rajaram v. ITU, et al.
Civil No. B 80-0012

Dear Mr. Mizrach:

This will respond to your letter of March 26, 1984, with its enclosure consisting of a copy of Mr. Rajaram's EEOC charge of discrimination dated August 30, 1978.

Despite your argument to the contrary, I am still of the opinion that the charge of discrimination in that document was filed only against the two unions listed as defendants therein, that is, Sunpapers Chapel of BTU-12 and

the International Typographical Union. The fact that other individuals or organizations were mentioned in the "Particulars" section of the EEOC charge does not indicate that they were intended to be defendants before the EEOC. Indeed, the EEOC did not treat them as such, limiting its inquiry to the action of the defendant unions as listed on the charge of discrimination.

It is quite natural that various individuals were mentioned in the "Particulars" section, in that an association such as a union can act only through the actions of individuals. However, the mere mention of those individuals' names is not sufficient to constitute them EEOC defendants.

Your argument to the contrary from the wording of the form is unconvincing. Although the form calls for multiple defendants to be listed

"below," there is no such listing in the "Particulars" section of the form. In other words, there is no listing of individuals in the "Particulars" section, giving their addresses and other data as called for in the "Defendant" section of the form. Furthermore, the word "Continuing" on the form has no reference to a continuing listing from the top to the bottom part of the form, but, rather, clearly refers only to the duration of the alleged discrimination.

For the reasons stated, I am still of the opinion that the EEOC charge was lodged only against the Sunpapers Chapel of BTU-12 and the International Typographical Union.

Very truly yours,

(Signature)
Frederic N. Smalkin

FNS/skp

cc Honorable Walter E. Black, Jr.
Bernard W. Rubenstein, Esquire
Ronald Rosenberg, Esquire
Court File

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MARYLAND

KONDIAN R. RAJARAM, (entered 2-19-1985)

Plaintiff FEB 15 1985

v.

INTERNATIONAL TYPOGRAPHICAL

UNION, et al.,

Defendants

CIVIL No. B-80-0012

ORDER

Upon consideration of the parties' Exceptions and Objections to the Report and Recommendation of the United States Magistrate, and the responses thereto, and having heard the respective oral arguments of all interested parties, at a hearing on February 13, 1985; in accordance with the Court's oral opinion

rendered at the conclusion of oral argument, it is, this 15th day of February, 1985, ORDERED:

1. That Plaintiff's Exceptions and Objections to the Report and Recommendation BE, and the same hereby ARE, OVERRULED;

2. That summary judgment for defendants BTU-12, Jack Poist and Gary Kidwell, with respect to Plaintiff's Title VII claim concerning the Union by-law provision BE, and the same hereby IS, GRANTED;

3. That Defendants' Exceptions and Objections to the Report and Recommendation in all other respects BE, and the same hereby ARE, OVERRULED;

4. That the recommended disposition in Magistrate Smalkin's Report and Recommendation of February 27, 1985 (sic) BE, and the same hereby IS, ADOPTED IN ITS ENTIRETY; and

5. That the Clerk of Court shall mail copies of this Order to counsel for the parties.

(Signature)
Walter E. Black, Jr.
United States District Judge

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MARYLAND

Kondian R. Rajaram, Plaintiff

v.

International Typographical Union, et al., Defendants

Civil No. B 80-0012

(entered December 18, 1984)

MAGISTRATE'S REPORT AND RECOMMENDATION

This case involves an attempt by plaintiff, Kondian R. Rajaram, to revive a discrimination suit filed in 1980. The history of this case is fully documented in the numerous briefs, memoranda, and orders which are a part of the record,

therefore, only the most pertinent facts will be discussed. Although plaintiff filed this action in 1980, he did not name A.S. Abell Publishing Company ("Abell") as a defendant until his second amended complaint, filed in 1983. 1 Pursuant to my Report and Recommendation, 2 subsequently adopted by the Court, 3 Abell was dismissed from this action. Plaintiff than (sic) filed the pending "Motion for Revision of Interlocutory Order of Court." 4 Abell has filed an opposition to plaintiff's motion, and plaintiff has

1 Paper no. 53.
2 Paper no. 107.
3 Paper no. 113.
4 Paper no. 146.

filed a reply thereto.

I.

A.

In his motion for revision, plaintiff claims that new evidence has been discovered that demonstrates misrepre-

sentation and fraudulent concealment by Abell, with respect to a 1977 arbitration award. Plaintiff asserts that such evidence would have a conclusive effect on the final determination of the merits of his claim against Abell. According to plaintiff, his claim is now being timely asserted, because he diligently searched for this new evidence, but only now has found it, due to the obstruction of the defendants.

Abell opposes plaintiff's motion, on the grounds that plaintiff's claims are speculative, and the claim is asserted beyond the period of limitations. Abell also contends that plaintiff has not met the standard for reconsideration. Abell requests that this Court certify the order of Abell's dismissal under Fed. R. Civ. P. 54(b), direct the entry of final judgment in its favor, and award it costs for opposing plain-

tiff's motion.

Plaintiff replies that the newly discovered evidence entitled him to a tolling of the limitations period, until after such evidence was discovered. Furthermore, plaintiff argues that Abell has not met the standard allowing for a Rule 54(b) order to be entered and, finally, that the Court, at oral argument on October 12, 1983, expressly gave plaintiff leave to bring Abell back into this case if new evidence was subsequently obtained.

B.

At the outset, it should be noted that plaintiff's motion was clearly not made within the time limits for taking exception to my earlier Report and Recommmendation. Fed. R. Civ. P. 72; Local Rule 82. Therefore the motion must be viewed as a motion to revise under Rule 54(b). Plaintiff also brought his mo-

tion, in the alternative, under Rule 60(b). However, Rule 60(b) is applicable only to a final judgment, which has not yet been entered in this case. To a certain extent, Abell recognizes that Rule 60(b) is inapplicable, because Abell has requested the court's entry of a Rule 54(b) certification.

Rule 54(b) applies to judgments upon multiple claims or involving multiple parties, and provides, in pertinent part, that where an order has been entered partially adjudicating a case, but without an express determination of "appealable finality" under Rule 54(b), "...the order or other form of decision is subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties." Nevertheless, Abell urges the point that a party requesting revision must meet certain

standards which give the Court a reason for reexamining its ruling. Abell contends that under the "law of the case" doctrine, "...a court ordinarily will not reconsider its own decision ... absent clear and convincing reasons to examine the prior ruling." Gertz v. Robert Welch, Inc., 680 F.2d 527, 532 (7th Cir. 1982), cert. denied, 459 U.S. 1226 (1983). In U.S. v. U.S. Smelting Refining & Mining Co., 339 U.S. 186, 198 (1950), it was held that the law of the case doctrine applies only "... when an issue is once litigated and decided...." (emphasis added). Arguably plaintiff's claim of new evidence presents an issue that has not been previously decided. Therefore, this Court does not believe that the law of the case doctrine bars plaintiff's motion for revision under Rule 54(b).

C.

Abell contends that plaintiff's assertions of misrepresentation and fraudulent concealment are speculative, and are also deficient because such claims were rejected by a prior order of this Court. Specifically, plaintiff claims that Abell maliciously and intentionally concealed from plaintiff certain facts regarding the 1977 arbitration award. Plaintiff also claims that Abell acted in concert with the Union defendants to conceal such facts. Plaintiff points out that his motion is supported by factual statements verified under oath.

Plaintiff's claims are conclusory in nature and not supported by specific facts, in spite of the fact that his motion is verified under oath. In my earlier Report and Recommendation, I held that plaintiff's previous claims of fraudulent concealment were not sup-

ported by specific factual allegations. In that Report, this court applied the test of Davis v. Edgemere Finance Co., 523 F.Supp. 1121 (D. Md. 1981) to plaintiff's claim of fraudulent concealment with respect to the statute of limitations. Plaintiff's claim of fraudulent concealment in the present motion also appears to be advanced in order to escape the bar of the limitations period. Therefore this Court holds that the law as stated in my earlier Report, adopted by the Court, is controlling, and, therefore, it finds plaintiff's present claim of fraudulent concealment to be insufficient. Plaintiff's claim of misrepresentation is likewise unsupported by facts and, thus, also is deficient.

D.

Abell raises the point that plaintiff's motion should be denied because

it is untimely. Abell claims that plaintiff discovered the alleged new evidence eleven months after Abell was dismissed from this action. Abell cites some cases that allow setting aside an interlocutory order only where due diligence is employed in connection with seeking a rehearing. See Faim Information Services, Inc. v. Borchert, 395 F.Supp. 878, 881 (S.D. N.Y. 1975). Plaintiff's reply to this point indicates that the parties are in dispute as to when the alleged new evidence was obtained. This Court notes that plaintiff has extended his case over an extraordinary period of time, but finds it unnecessary to rule on the timeliness of plaintiff's motion in light of the ultimate outcome of this motion.

II.

Abell has requested, in an attempt to curtail the relitigation of old

claims, an order directing the entry of judgment in its favor under Fed. R (sic) Civ. P. 54(b). Rule 54(b) provides in pertinent part:

> When more than one claim for relief is presented in an action ... or when multiple parties are involved, the court may direct the entry of a final judgment as to one or more but fewer than all of the claims or parties only upon an express determination that there is no just reason for delay and upon an express direction for the entry of judgment.

Abell contends that the court's order, dismissing Abell from this action "disposes of a cognizable claim for relief," and "there is no just reason for delay."

The purpose of Rule 54(b) is to make an immediate appeal available and thus avoid delay in entering judgment on a separate claim, or as to fewer than all the parties until final judgment on the entire case.

> The rule does not require that a judgment be entered when the

> court disposes of one or more claims or terminates the action as to one or more parties. Rather, it gives the court discretion to enter a final judgment in these circumstances and it provides a much needed certainty in determining when a final and appealable judgment has been entered.

10 Wright, Miller & Kane, Federal Practice and Procedure: Civil S 2654 (1983). At least one claim, or the rights and liabilities of at least one party must be decided in order to invoke Rule 54(b). However, "...it is not necessary that the rights and liabilities of a party or the claim must be decided on the merits." Id. at S 2656.

This court, in the case of J. Aron & Company, Inc. v. Service Transp. Co., 515 F.Supp. 428, 432 (D. Md. 1981), relying upon Sears, Roebuck & Co. v. Mackey, 351 U.S. 428 (1956), held that the following steps are necessary in making a Rule 54(b) certification:

> First it must be determined

> that the judgment under consideration is a "final judgment." A "judgment" in the sense that it is a decision upon a cognizable claim for relief, and "final" in the sense that it is "an ultimate disposition of an individual claim entered in the course of a muiltiple (sic) claims action." Second, the court must determine whether there is any just reason for delay.

In this case Abell was only one of several defendants. It is clear that the court's dismissal of Abell terminated the action as to it. As such, the court's dismissal is a final judgment under the definition in J. Aron, supra. There is no just reason for delay in entering an order under Rule 54(b) certifying Abell's dismissal as a final judgment. Although there is a strong federal policy against piecemeal review, Rule 54(b) certification is proper in a case as protracted as this. This case has been before the court for over four years, and Abell's dismissal is one of

the first dispositive developments in the litigation. Rather than to allow Abell's dismissal to remain interlocutory (and thus subject to yet further attempts to revise the claim against Abell), the prudent course would be to enter a Rule 54(b) certification and to allow plaintiff to appeal Abell's dismissal if that be his desire.

III.

Abell has also asked the Court for an order requiring plaintiff and his attorneys to pay expenses and attorney's fees incurred in opposing plaintiff's motion for revision. Abell views plaintiff's motion as vexatious, frivolous and intended to harass. Abell argues that costs are authorized against a lawyer who "...multiplies the proceedings in any case unreasonably and vexatiously...." 28 U.S.C. S 1927. In addition, Abell argues that plaintiff's

attorney's actions contravene Fed. R. Civ. P. 11, and, accordingly, that sanctions should be imposed against plaintiff.

Plaintiff opposes Abell's claim, contending that Abell's assertions are themselves vexatious and frivolous, and, therefore, costs and fees should be awarded to plaintiff.

Although this court believes that plaintiff's motion for revision is insufficient as a matter of law, it is not prepared to characterize the motion as either vexatious or frivolous. Therefore this court declines to award Abell costs and fees under 28 U.S.C. S 1927 or Rule 11. However, because Abell is the prevailing party, and it will no longer be a party to this action if its dismissal is certified under Rule 54(b), it is entitled to costs as provided for in Rule 54(d). Abell should comply with

the Local Rule 23 in submitting its bill of costs.

For the above reasons, it is, this 14th day of December, 1984, RECOMMENDED THAT:

1. Plaintiff's motion for revision be DENIED;

2. Abell's request for entry of final judgment under Rule 54(b) be GRANTED, and that the Court find that there is no just reason for delay and direct entry of final judgmentas (sic) to the dismissal of Abell from this suit; and

3. Abell be awarded costs, pursuant to Rule 54(d), as the prevailing party in this action.

This Report and Recommendation is made pursuant to the provisions of FED. R. CIV. P. 72, for taking exception hereto.

(Signature)
Frederic N. Smalkin
United States Magistrate

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MARYLAND

KONDIAN R. RAJARAM, Plaintiff

v.

INTERNATIONAL TYPOGRAPHICAL UNION, et al., Defendants

CIVIL ACTION NO. B-80-0012

(entered February 13, 1985)

ORDER

Upon consideration of Plaintiff's Exceptions and Objections to Report and Recommendation of the United States Magistrate and Defendant A.S. Abell's Response thereto, and having heard the respective oral arguments of all interested parties at a hearing herein this date; in accordance with the Court's oral opinion rendered at the conclusion of oral argument, IT IS, this 8th day of February, 1985,

ORDERED, that Plaintiff's Exceptions and Objections shall be, and the

same hereby are, OVERRULED; and it is further

ORDERED, that the recommended disposition in Magistrate Smalkin's Report and Recommendation of December 14, 1984, shall be, and hereby is, ADOPTED IN ITS ENTIRETY; and it is further

ORDERED, that Plaintiff's Motion for Revision of this Court's Order of November 6, 1983, which dismissed Defendant A.S. Abell from this case, shall be, and the same hereby is, DENIED; and it is further

ORDERED, that in conjunction with the Order of November 6, 1983, FINAL JUDGMENT is hereby directed to be entered in favor of Defendant A.S. Abell and against Plaintiff under Rule 54(b), F.R.Civ.P., there being no just reason for delay; and it is further

ORDERED, that Defendant A.S. Abell

shall be, and hereby is, awarded its costs, in accordance with Rule 54(d), F.R.Civ.P., as the prevailing party in this action.

(Signature)
Walter E. Black, Jr.
United States District Judge

UNITED STATES DISTRICT COURT
OFFICE OF THE CLERK
DISTRICT OF MARYLAND

CALVERT AND FAYETTE STREETS
BALTIMORE, MARYLAND 21202

JOSEPH A. HAAS
CLERK

MEMORANDUM (entered 8-12-1985)

TO: HONORABLE WALTER E. BLACK, JR.,

FROM: ALEXIS K. CALLAHAN, APPEALS CLERK

RE: KONDIAN R. RAJARAM v INTERNATIONAL TYPOGRAPHICAL UNION, ET AL CIVIL DOCKET NO. B-80-0012

Attached hereto is Plaintiff's Designation of the Record on Appeal and request for inclusion of the material to be forwarded with the Record on Appeal.

May we include this material with the Record? Thank you.

July 12, 1985

TO: Ms. Callahan

As far as the Court is concerned, the plaintiff may designate any and all pleadings and material from Case No. B-80-0012, including any material he may have furnished the Court directly, but he should furnish you with copies of the latter material for inclusion in the record.

However, plaintiff may not designate for the appeal record in B-80-0012, anything which may pertain to the closed file of Case No. JH-79-1826.

IT IS SO ORDERED, this 12th day of August, 1985.

(Signature)
Walter E. Black, Jr.
United States District Judge

UNPUBLISHED
UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 85-1268

Kondian R. Rajaram, Appellant,

versus

A. S. Abell Publishing Company, Appellee,

and

International Typographical Union; Baltimore Typographical Union No. 12; Sunpapers Chapel of Baltimore Typographical Union No. 12; Jack Poist; Gary Kidwell, Defendants.

Appeal from the United States District Court for the District of Maryland, at Baltimore. Walter E. Black, Jr., District Judge. (C/A No. 80-12)

Submitted: December 12, 1985

Decided: January 9, 1986

Before RUSSELL and SNEEDEN, Circuit Judges, and BUTZNER, Senior Circuit Judge.

(Kondian R. Rajaram, Appellant Pro Se. Jeffrey P. Ayres, Venable, Baetjer and Howard, for Appellee.)

PER CURIAM:

Kondian R. Rajaram appeals the denial by the district court of his

motion for revision of an interlocutory order under Fed. R. Civ. P. 54(b), and the subsequent entry under Rule 54(b) of a final judgment dismissing A.S. Abell Publishing Company (Abell) as a defendant in Rajaram's suit.

I

In his motion for revision, Rajaram attempted to resurrect claims against Abell under 42 U.S.C. Sections 1985, 1986; Section 301 of the Taft-Hartley Act, 29 U.S.C. Section 185; and under state contract law. Rajaram stopped working for Abell in 1978. Although Rajaram originally filed suit against his union in 1980, he did not name Abell as a defendant until he filed his second amended complaint in 1983. On October 20, 1983, the magistrate recommended dismissal of the civil rights and Section 301 breach of contract claims as barred by the applicable statutes of

limitations. 1 The magistrate rejected Rajaram's claim that he was

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1 The statute of limitations for actions under 42 U.S.C. Section 1985 is three years, with the cause of action accruing when the plaintiff knows or has reason to know of his injury. Lewis v. Clark, 534 F. Supp. 714, 716 (D. Md. 1982). The limitations period for actions under Section 1986, as stated in the statute itself, is one year. The claim under the Taft-Hartley Act was subject to a six-month limitations period. Del Costello v. International (cont'd)

entitled to a tolling of the statute of limitations under the doctrine of fraudulent concealment. See Davis v. Edgemere Finance Co., 523 F. Supp. 1121, 1125 (D. Md. 1981). In light of the insubstantial nature of Rajaram's federal claims, the magistrate further recommended the district court decline jurisdiction over the state law contract claims against Abell. In the absence of objections from either party, the dis-

trict court adopted the report and recommendation of the magistrate in its entirety, and on November 10, 1983, entered an order dismissing Abell as a defendant in the suit.

On October 12, 1984, Rajaram moved the district court to revise its interlocutory order dismissing Abell from the suit. In his motion for revision, Rajaram claimed that new evidence had been discovered that demonstrated misrepresentation and fraudulent concealment by Abell, with respect to a 1977 arbitration award. According to Rajaram, the newly-discovered evidence entitled him to a tolling of the limitations periods on his claims until after such evidence was discovered. Abell opposed the motion as untimely and on the grounds that Rajaram's allegations of fraud were speculative. Abell further requested the court

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1 Brotherhood of Teamsters, 462 U.S. 151 (1983); see also Del Costello v. Local 1557, International Brotherhoiod of Teamsters, 762 F.2d 1219, 1221 (4th Cir. 1985) (applying Del Costello retroactively); Murray v. Branch Motor Express Co., 723 F.2d 1146, 1148 (4th Cir. 1983) cert. denied, ____ U.S. ____, 53 U.S.L.W. 3289 (Oct. 15, 1984) (same).

to certify the order of Abell's dismissal under Fed. R. Civ. P. 54(b), direct entry of judgment in favor of Abell, and award costs under Fed. R. Civ. P. 54(d).

The magistrate found Rajaram's claims that Abell maliciously, intentionally, and in conspiracy with the union concealed from him certain facts regarding the 1977 arbitration award to be conclusory in nature and unsupported by specific facts. Because he regarded Rajaram's claim of fraudulent concealment as insufficient to require reinstatement of his three earlier claims,

the magistrate reacommended denial of the motion for revision and the entry of a final judgment dismissing Abell from the suit.

After a hearing on Rajaram's objections to the magistrate's recommendation, the district court adopted the report in its entirety. Rajaram now appeals from the order of the district court entering final judgment for Abell under Fed. R. Civ. P. 54(b).

II

On appeal Rajaram challenges the propriety of the district court's entry of final judgment under Fed. R. Civ. P. 54(b). That rule

> permits a district court to enter final judgment as to one or more but fewer than all claims in a multi-claim action when there is "more than one claim" for relief pressented in the action, and there "is no just reason for delay."

Para-Chem Southern, Inc. v. M. Lowenstein Corp., 715 F.2d 128, 131 (4th

Cir. 1983). The issuance of a certificate by the district court under Rule 54(b) is not conclusive as to the finality of the court's order. Page v. Preiser, 585 F.2d 336, 338 (8th Cir. 1978). Here, however, we are satisfied that the district court properly directed the entry of a final judgment disposing of all claims by Rajaram against Abell. In this suit, Rajaram brought multiple claims against his local and international unions and against individual union officials, as well as against Abell. As the magistrat noted, the dismissal of Abell as a defendant was one of the first dispositive developments in this protracted litigation. The district court decision was an ultimate disposition of several cognizable claims for relief entered in the course of a multiple action claim, see J. Aron and Co. v. Service Trans-

portation Co., 515 F. Supp. 428, 432 (D. Md. 1981), and therefore the proper subject of an entry of judgment under Rule 54(b). The district court's further determination that there was "no just reason for delay" was also a proper exercise of discretion under all the circumstances of this case. See Curtiss-Wright Corp. v. General Electric Co., 446 U.S. 1, 8 (1980); Para-Chem Southern, Inc., 715 F. 2d at 132. We therefore find it proper to consider the merits of this appeal.

III

We conclude that Rajaram's appeal fails utterly on the merits. There is no dispute between the parties as to the showing Rajaram must make in order to achieve an equitable tolling of a limitations period under Davis. To avoid the statute of limitations under a doctrine of fraudulent concealment, a

plaintiff

> "must state in his bill distinctly the particular act of fraud, misrepresentation, or concealment, -- must specify how, when and in what manner it was perpetrated. The charges must be definite and reasonably certain, capable of proof, and clearly proved. . . . And especially must there be distinct averments as to the time when the fraud, mistake, concealment or misrepresentation was discovered, and what the discovery is, so that the court may clearly see, whether, by the exercise of ordinary diligence, the discovery might not have been before made."

Davis, 523 F. Supp. at 1126 (quoting Stearns v. Page, 48 U.S. (7 How.) 819, 829 (1849).

During a hearing before the district court judge on his objections to the magistrate's recommendation, Rajaram submitted two documents which purportedly supported his theory of fraud. The first document was a letter from Abell dated August 22, 1978, informing Rajaram that, pursuant to the 1977 arbitration award, the employer and union determined

that Rajaram was entitled to the sum of $246.07. In November 1983, while continuing to pursue discovery on his remaining claims against the union, Rajaram learned of a dispute between the union and the company regarding compliance with the arbitration award, and that the union had filed a complaint with the National Labor Relations Board (NLRB). The second document offered by Rajaram was a March 23, 1984, letter to him from the NLRB regarding his request under the Freedom of Information Act for the transcript of the arbitration proceeding, which Rajaram ultimately received in April 1984. Rajaram claims the arbitration decision entitled him to reinstatement and additional money. He therefore argues that the August 22, 1978, letter was a deliberate act of concealment or misrepresentation on the part of Abell.

Rajaram has made a number of broad and vague assertions of conspiracy betwen Abell and the union. However, merely intoning the word fraudulent is not sufficient to raise the defense. Weinberger v. Retail Credit Co., 498 F.2d 552, 555 (4th Cir. 1974). Rajaram has failed to demonstrate any particular act of fraudulent conspiracy which would permit him to avoid the statute. The mere nondisclosure by Abell in its August 1978 letter of its dispute with the union over the arbitration award 2

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2 Indeed, the record indicates the company has consistently made known its dissatisfaction with the arbitration award. In an affidavit dated October 15, 1984, John J. Banach, Jr., Vice President of Industrial Relations for Abell, stated that upon receipt of the 1977 arbitration decision, he informed the union during its current negotiations that the company "could not live with the terms of the award and would insist on changing (cont'd)

does not constitute an affirmative act

of fraudulent concealment which frustrated Rajaram's ability to learn of the factual bases for any of Rajaram's multiple claims against Abell. Nor has Rajaram presented any evidence that fraudulent intention on the part of the company prevented any further disclosure to Rajaram. See Chevalier v. Baird Savings Association, 371 F. Supp. 1282, 1285 (E.D. Pa. 1974) (suggesting possible application of fraudulent concealment doctrine under these circumstances. 3

Even if the August 1978 letter were so construed, the record amply supports the district court conclusion that, by exercising ordinary diligence, Rajaram could have obtained the

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2 the old collective bargaining agreement in order to deal with the issue of substitutes." After the award, the newspaper refused to reinstate the temporary situations. Despite grievances

and a charge filed with the NLRB, the union could not enforce compliance with the arbitration award; the Board refused to issue a complaint and dismissed the charge.

3 On appeal Rajaram also objects to the district court's refusal to examine additional documents submitted a few days prior to the hearing. The materials included the transcript of the 1977 arbitration proceeding, a newspaper article concerning the arbitration award, copies of the union contracts, and answers to interrogatories posed to the union defendants. In making a de novo determination, a district court may receive evidence in addition to that before the magistrate. 28 U.S.C. Section 636(b)(1). See also United States v. Frans, 697 F.2d 188, 191 n.3 (7th Cir.), cert. denied, 464 U.S. 828 (1983). However, our review of this material discloses that it adds little of significance to support Rajaram's theory of fraudulent concealment. Therefore, the court's refusal to consider the additional submissions did not prejudice Rajaram.

necessary information about the arbitration proceeding well before November 1983. During the hearing before the district court, Rajaram acknowledged that he knew of the existence of an

arbitration award in 1977, and also admitted to being suspicious that he had not received everything to which the arbitration award entitled him. In his motion to revise the interlocutory order, Rajaram stated that the union informed him after the arbitration hearing that the award should cost the company a substantial amount of money. Yet, despite his suspicions, Rajaram failed to focus his discovery efforts on the arbitration proceeding until he happened to obtain additional information about the award in November 1983. Abell had no duty to disclose the terms of the arbitration award to Rajaram, and the record indicates he had sufficient notice of the award in 1978 to require him to make further inquiry as to its terms. 4

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4 Rajaram also objects to not being permitted to amend his motion to

revise. Although portions of the district court's ruling were couched in terms of a deficiency in Rajaram's pleadings, the ruling was clearly a decision on the merits of Rajaram's claim of fraudulent concealment. It is unclear what Rajaram hopes to accomplish by amendment. During an October 12, 1983, hearing before the magistrate on Abell's earlier motion to dismiss, and during the subsequent hearing before the district court on Rajaram's motion to revise the interlocutory order, Rajaram had ample opportunity to plead and prove his theory of fraudulent concealment. Considering the lateness of the motion, and other circumstances of the case, the district court judge did not abuse his discretion in denying the motion to amend. See Page v. (cont'd)

For the foregoing reasons, we affirm the order of the district court entering final judgment for A.S. Abell Publishing Company on Rajaram's claims.[5] Although meritless, we do not

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4 Bolger, 645 F.2d 227, 228 n.1 (4th Cir.) (en banc), cert. denied, 454 U.S. 892 (1981); see also Girard Trust Bank v. Martin, 557 F.2d 386, 390-91 n.3 (3d Cir.), cert. denied, 434 U.S. 985

(1977) (denial of motion to amend petition which sought to open or vacate judgment on grounds of fraud proper when probing at oral argument failed to reveal presence of any fraud.

5 In his informal brief, Rajaram also cites as error the district court's ruling that he had no private right of action under 42 U.S.C. Section 2000e-10 for Abell's alleged failure to post a proper notice of an employee's rights. Abell argues that Rajaram waived appellate review of this claim by his failure to object to the magistrate's recommendation to dismiss this claim. See United States v. Schronce, 727 F.2d 91, 94 (4th Cir.), cert. denied, ___ U.S. ___, 52 U.S.L.W. 3844 (May 21, 1984). Rajaram contends there was no waiver of appellate review because the district court's subsequent entry of judgment was interlocutory, and the district court retained discretion to revise the order at any time prior to the entry of final judgment. See Fed. R. Civ. P. 54(b).

The magistrate's report concluded with a recommendation that, "upon the expiry of time allowed in Local Rule 82 and Fed. R. Civ. P. 72 for taking exception hereto, an order be entered granting defendant Abell's motio to dismiss." Although this language is perhaps not as clearly mandatory as that in Schronce, 747 F.2d at

94, in view of Rajaram's representation by counsel below, we would construe the magistrate's directive as sufficient to alert Rajaram to his procedural obligations. The fact that the district court's entry of judgment was interlocutory did not relieve Rajaram of his obligation to file objections to the magistrate's recommendation. Although the district court's order was subject to further revision, Rajaram failed to raise the claim in his motion to revise the interlocutory order; nor did he raise the matter at any time in the district court after (cont'd)

regard the appeal as frivolous. We therefore deny Abell's request for double costs and attorney's fees. See Harman v. Pauley, 678 F.2d 479, 482 (4th Cir. 1982). As the dispositive issues recently have been decided authoritatively, we dispense with oral argument and affirm the judgment below.

AFFIRMED.

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5 Abell moved the court to direct the entry of judgment under Rule 54(b). Absent exceptional circumstances, questions not raised and properly preserved in the

district court will not be considered on appeal. United States v. One 1971 Mercedes-Benz, 542 F.2d 912, 915 (4th Cir. 1976). Under the circumstances, we regard the issue as waived.

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
No. 85-1268

FILED FEB 25 1986

Kondian R. Rajaram, Appellant,

versus

A. S. Abell Publishing Company, Appellee,

and

International Typographical Union, et al, Defendants.

Appeal from the United States District Court for the District of Maryland, at Baltimore. Walter E. Black, Jr., District Judge

Upon consideration of the appellant's pro se petition for rehearing,

IT IS ORDERED that the petition for rehearing is denied.

Entered at the direction of Judge Sneeden for a panel consisting of Judge

Russell, Judge Sneeden and Judge Butzner.

For the Court,

JOHN M. GREACEN
CLERK

UNITED STATES DISTRICT COURT

FOR THE

DISTRICT OF MARYLAND

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, Plaintiff,

v. (entered June 25, 1980)

SUNPAPER CHAPEL OF BTU-12; and INTERNATIONAL TYPOGRAPHICAL UNION, Defendants.

CIVIL ACTION NO. JH-79-1826

ORDER

The parties have filed a Consent Decree reciting their agreement that certain actions be taken by Defendant, and all parties to this action have signed that Decree and consented to its

entry.

The Court being fully advised in the premises, and having signed and entered the Consent Decree, now therefore orders that this case is hereby dismissed with prejudice by reason of entry of the Consent Decree and that no costs are assessed against either party.

Date: 18 June 1980

(Signature)
UNITED STATES DISTRICT COURT
JUDGE
JOSEPH C. HOWARD
Judge

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MARYLAND

Kondian R. Rajaram, Plaintiff

v.

International Typographical Union, et al., Defendants (entered February 1, 1985)

Civil No. B 84-2465

MEMORANDUM AND ORDER

Presently pending before the Court is Mr. Rajaram's motion to remand this action to state court.

In this action, Rajaram has sued the A.S. Abell Publishing Company ("Abell") and a number of Union defendants. Rajaram originally brought this action in the Circuit Court for Baltimore City. Upon the defendants' petition, the suit was removed to this court pursuant to 28 U.S.C. S1441. 1

Mr. Rajaram alleges that Abell failed fully to perform its obligations under an agreement that was reached in an arbitration proceeding. With respect to the Union defendants, Rajaram alleges that they intentionally withheld information from him and other beneficiaries of the arbitration award and, also that they breached their contractual duty of fair representation to him.

1 See paper no.'s 1-5.

Mr. Rajaram has another case pending in this Court against the same defendants: Rajaram v. International Typographical Union, et. al., B-80-0012. There are similar issues pending in each case, and some of them have been ruled upon; however, this Court will not address any issues of res judicata at this time, because the pending motion deals only with Mr. Rajaram's attempt to remand this case to state court. If remand is denied, this Court will grant Mr. Rajaram an appropriate amount of time in which to respond to the defendants' motion to dismiss, pursuant to Judge Hargrove's order of July 23, 1984. 2

I.

Mr. Rajaram alleges that the defendants removed this case to federal court because they believe that his cause of action is based on a collective

bargaining agreement between Abell and the Union defendants. If Rajaram's cause of action is based on a collective bargaining agreement, than (sic) this court has original jurisdiction under the Labor Management Relations Act, 1947, S301, as amended, 29 U.S.C. S185 (hereinafter referred to as S185). However, plaintiff argues that this action is not based on any collective bargaining agreement.

According to Rajaram, his cause of action is based on an agreement between all the parties, whereby they agreed to be bound by arbitration. Rajaram contends that it is questionable whether there even was a collective bargaining agreement in

2 Paper no. 14.

effect at the relevant times. Moreover, Rajaram contends that the parties not only agreed to be bound by arbitration,

but also agreed to ignore any collective bargaining agreement. 3

Rajaram claims that because his cause clearly does not involve a collective bargaining agreement, S185 is not implicated and therefore this Court cannot divest the State Circuit Court of jurisdiction. Rajaram supports his claim with an affidavit of Theodore J. Kees, President of Baltimore Typographical Union ("BTU"), Local no. 12, the collective bargaining agent of the composing room employees of Abell. In his affidavit, Kees states that between January 1, 1977, and July 6, 1978, members of Local no. 12 were without a collective bargaining agreement. Rajaram claims that he is not asking for enforcement of a collective bargaining agreement, and that, therefore, the Court should not deal with it.

Finally, Rajaram claims that de-

fendants' strategy to remove this case from state court to federal court, and than (sic) move for dismissal, is a frivolous, self-defeating tactic which this Court should not allow. See Baas v. Elliot, 71 F.R.D. 693 (E.D. N.Y. 1976).

II.

Defendants oppose Rajaram's motion to remand, on several grounds. Defendants contend that the arbitration award

3 Rajaram's declaration, filed in the Circuit Court for Baltimore City (paper no. 4), states in Count II, paragraph 4:

> 4. All parties agreed to be bound by the Arbitrator's determination without regard to arbitrability of the issues or status of the Collective Bargaining Agreement.

in question was rendered under a collective bargaining agreement; therefore, federal jurisdiction exists under S185 and 28 U.S.C. S1441. In addition, defendants contend that Rajaram's suit

alleges a breach of the Union defendants' duty of fair representation and breach of a labor contract by Abell, which also implicates S185.

Defendants argue that S185 does not limit jurisdiction to actions concerning collective bargaining agreements, but, rather, covers violations of contracts between employers and labor organizations. According to defendants, the agreement of Abell and the Union defendants to be bound by the arbitrator's decision, regardless of any collective bargaining agreement, is a labor contract under S185. Defendants further contend that S185 gives the Court jurisdiction to interpret a collective bargaining agreement and that Rajaram's claims concerning the arbitration award require the Court to interpret the collective bargaining agreement. Defendants argue that such interpretation is

at the heart of Rajaram's claims. Defendants also argue that in addition to conferring jurisdiction existing with respect to Abell for breach of a labor contract, S185 also gives the Court jurisdiction over Rajaram's claim of the Union defendants' breach of duty.

Lastly, defendants claim that because the arbitrator referred repeatedly to the collective bargaining agreement and because the affidavit of Kees states that an oral agreement existed between Abell and the Union defendants (although not a formal collective bargaining agreement), jurisdiction exists under S185.

III.

Section 185(a) reads as follows:

> Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any district court of

> the United States having jurisdiction of the parties, without respect to tha (sic) amount in controversy or without regard to the citizenship of the parties.

It is evident that the statute itself is not limited to collective bargaining agreements: indeed, that term is not even mentioned. Instead, the broader term "labor contract" is used. Courts have construed the term "labor contract" to encompass more than collective bargaining agreements. See, e.g., Retail Clerks v. Lion Dry Goods, 369 U.S. 17,23-28 (sic) (1962) (the term "contracts" as used in S185(a) is not limited to traditional collective bargaining agreements); Burlesque Artists Association v. American Guild of Variety Artists, 187 F.Supp. 393,394 (sic) (S.D. N.Y. 1958) (the word "contracts" in S185 is not restricted to contracts arising out of collective bargaining, but means contracts in the customary and accepted

meaning of the word). Of course, although the term "labor contract" includes a collective bargaining agreement, the two terms are not mutually exclusive. See Parks v. International Brotherhood of Electrical Workers, 203 F.Supp. 288 (D. Md. 1962) (Federal courts should take a broad view of the jurisdiction granted by S185), rev'd on other grounds, 314 F.2d 889 (4th Cir.), cert. denied, 372 U.S. 976 (1963); see also Deaton Truck Line, Inc. v. Local Union 612, 314 F.2d 418 (5th Cir. 1962). Moreover, arabitration conducted without regard to a collective bargaining agreement has been found to be a contract within the meaning of S185. Minot Builders Supply Association v. Teamsters Local 123, 703 F.2d 324, (8th Cir. 1983).

Having determined that S185 includes not only collective bargaining

agreements, but also other types of labor contracts, the next inquiry is whether the arbitration agreement in question, which Rajaram alleges was violated, is a labor contract. This Court holds that it is. In Retail Clerks, supra, the Court held:

> [c]ontract in labor law is a term the implications of which must be determined from the connection in which it appears. (citation omitted) It is enough that this is clearly an agreement between employers and labor organizations significant to the maintenace of labor peace between them.

369 U.S. at 28.

In the present case, the agreement to be bound by arbitration was clearly an agreement of a type designed to maintain "labor peace" between an employer and a labor organization. Therefore, this Court holds that the arbitration agreement is a labor contract and, consequently, that jurisdiction exists to adjudicate Mr. Rajaram's complaint.

This Court notes that Rajaram contends that no federal jurisdiction exists under the rule stated in Byrne v. Mass Transit Administration, 58 Md. App. 501, 473 A.2d 956 (1984). However, Rajaram's reliance on that case is misplaced because that case is not dispositive. In Byrne, no jurisdiction existed because the defendant employer was a state agency and thus exempt from federal labor laws. 58 Md. App. at 506-507. See 29 U.S.C. S152(2).

Therefore, this Court does not find it necessary to rule on the existence vel non of a collective bargaining agreement, because 'jurisdiction otherwise exists under S185(a).

However, because Rajaram's suit alleges two different claims against the defendants, it is necessary to determine if jurisdiction exists as to each defendant. Rajaram's claim against Abell

is based on an alleged violation of the arbitration agreement. For Rajaram to prevail against Abell, he must prove a breach of that agreement, a labor contract. Thus, based on the analysis above, jurisdiction exists as to Abell. Rajaram's claim against the Union defendants is based upon the alleged breach of the Union's duty of fair representation. Jurisdiction also exists with respect to the Union defendants, because the claim of breach of a labor contract and breach of the duty of fair representation "are inextricably interdependent." DelCostello v. International Brotherhood of Teamsters, ___ U.S. ___, 103 S.Ct. 2281,2290 (1983). In that case, the Supreme Court termed such a suit "a hybrid S301 [S185]/fair representation claim." DelCostello, 103 S.Ct. at 2291. See also, Diaz v. Schwerman Trucking Company, 709 F.2d

1371 (11th Cir. 1983); Thomas v. Consolidation Coal Company, 380 F.2d 69, 76,n.7,77 (4th Cir. 1967).

IV.

Rajaram's reliance on Baas v. Elliot, 71 F.R.D. 693 (E.D. N.Y. 1976), to the effect that the defendants' action in removing this case to federal court was frivolous, has no merit at all. In Baas, the defendants removed a case from state court, alleging federal jurisdiction, and upon removal, sought dismissal for lack of federal jurisdiction. In this case, because federal jurisdiction exists, removal was proper. Avco Corp. v. Aero Lodge No. 735, 390 U.S. 557 (1968); 28 U.S.C. S1441. Therefore, defendants have the right to utilize all defenses, including, but not limited to, a motion to dismiss under Fed. R. Civ. Proc. 12(b)(6). See, e.g., Home Health Services, Inc. v. Currie,

531 F.Supp. 476, 478 (D. S.C. 1982) (stating that "the test for determining the existence of a federal question under 28 U.S.C. SS1331 and 1441 and the test for determining the existence of a viable claim under Fed. R. Civ. Proc. 12(b)(6) and 56(b) are entirely separate and distinct"), aff'd, 706 F.2d 497 (1983); Seal v. Industrial Electric, Inc., 362 F.2d 788, 789 (5th Cir 1966) (stating that "a removed case proceeds according to Federal procedural rules as though it had originally been commenced in the Federal court").

For the above reasons, it is, this 1st day of February 1985, by the United States District Court for the District of Maryland, ORDERED that:

Plaintiff Rajaram's motion to remand this action to State Court be DENIED;

Plaintiff has until February 22,

1985 in which to file a response to defendants' motion to dismiss; and

The Clerk shall mail copies of this Memorandum and Order to counsel of record for the parties.

This order is made subject to the provisions of Fed. R. Civ. P. 72 for taking exception hereto.

(Signature)
Frederic N. Smalkin
United States Magistrate

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MARYLAND

Kondian R. Rajaram, Plaintiff

v.

International Typographical Union, et al., Defendants (entered March 28, 1985)

Civil No. B-84-2465

MAGISTRATE'S REPORT AND RECOMMENDATION

The A.S. Abell Company ("Abell"), the company defendant in this employment

discrimination case, filed a motion to dismiss on June 22, 1984. 1 Abell recently supplemented its motion, due to its recent dismissal from a companion case to this action. 2 The present action was originally filed in The Circuit Court for Baltimore City, and removed on defendants' motion to this Court. Rajaram's motion to remand this action to state court was denied. 3 Rajaram has filed an opposition to Abell's motion to dismiss, and Abell has filed a reply thereto.

This case involves a dispute based on Rajaram's allegation that defendants failed to perform in accordance with a 1977 arbitration award. In addition, Rajaram alleges a breach of the duty of fair representation with respect to the Union defendants. Because the particular facts of this case are amply documented in the record, they will not be

recited.

1 Paper no. 6.

2 Rajaram v. ITU, B-80-0012. See paper no. 154.

3 Paper no. 23.

I.

A.

Abell argues that this action must be dismissed on several grounds: res judicata, the law of the case doctrine, the statute of limitations, and the theory that the named individual defendants are not proper parties for a suit of this nature.

B.

In opposition to Abell's motion, Rajaram claims that the individual defendants are necessary parties to the adjudication of this case. Plant v. Laborer's International Union, 324 F. Supp. 1021 (D. Del. 1971); F. R. Civ. P. 19.

Rajaram also argues that he is en-

titled to a judgment in this case because a default judgment regarding the arbitration award was obtained in the Circuit Court for Baltimore City. Rajaram claims that under Kremer v. Chemical Construction Corp., 456 U.S. 461 (1982), federal courts are required to give preclusive effect to state court judgments. Therefore, according to Rajaram, his default judgment establishes the liability of defendants in this case. See Blonder-Tongue Laoratories, (sic) Inc. v. University of Illinois Foundation, Inc., 402 U.S. 313 (1971); Beaver v. Bridwell, 598 F. Supp. 90 (D. Md. 1984).

C.

In reply to Rajaram's opposition, Abell contends that this Court should not give any preclusive effect to the default judgment enteed in state court. Although Abell thoroughly briefed this issue, the Court need not address it.

Abell recently informed the Court that all the default orders in Rajaram's state court action have been vacated. 4 There is thus no outstanding final state court judgment to which this Court could give preclusive effect.

II.

A.

The gravamen of Abell's motion is that this Court's prior rulings in Rajaram's other case, Rajaram v. ITU, B-80-0012, should be given preclusive effect under the doctrine of res judicata. In 80-0012, Judge Black held that Rajaram's claims of fraudulent concealment, regarding the 1977 arbitration award, were insufficient under the test of Davis v. Edgemere Finance Co., 523 F.Supp. 1121 (D. Md. 1981). Judge Black entered an order dismissing Abell, and entering final judgment in its favor. 5 Rajaram's claims against Abell for breach of

S301 of the Labor Management Relations Act, 29 U.S.C. S185 were also dismissed by Judge Black in a prior order because those claims were barred by the statute of limitations. 6

Several days after Judge Black dismissed Abell from 80-0012, he also entered an order dismissing several of Rajaram's claims against the Union defendants. Rajaram's claims against the Union defendants in this case are substantially similar to those that were dismissed in 80-0012.

4 See paper no. 29, exhibit A.

5 Paper no. 154 in 80-0012.

6 See paper no. 113 in 80-0012, adopting the Magistrate's Report and Recommendation, paper no. 107. Rajaram's Motion for Reconsideration was denied, paper no. 150, and adopted in its entirety by the Court, paper no. 154.

Although only Abell moved to dismiss this action on the basis of res judicata, this Court will apply Abell's

argument to the Union defendants as well. Notwithstanding the fact that res judicata is an affirmative defense under Fed. R. Civ. P. 8(c), and may be waived if not properly asserted, there are certain factors, present here, which allow the Court to raise the doctrine sua sponte. "Dismissal by the court sua sponte on res judicata grounds ... is permissible in the interest of judicial economy where both actions were brought before the same court." Boone v. Kurtz, 617 F.2d 435, 436 (5th Cir. 1980). The interest of judicial economy is an important factor in this case. Rajaram's first case, 80-0012, was filed in 1980, and that record is voluminous. Although this case, 84-2465 was originally filed in a state court and removed on defendants' motion to this court, it should have been consolidated with 80-0012. Be that as it may, it appears to this Court

that, in the interest of judicial economy, the doctrine of res judicata can be raised on the Court's own motion and applied to the Union defendants as well.

B.

The doctrine of res judicata, as it has developed, was recently discussed by the Supreme Court:

> The preclusive effects of former adjudication are discussed in varying and, at times, seemingly conflicting terminology, attributable to the evolution of preclusion concepts over the years. These effects are referred to collectively by most commentators as the doctrine of "res judicata." See Restatement (Second) of Judgments, Introductory Note before ch. 3 (1982); 18 C. Wright, A. Miller, & E. Cooper, Federal Practice and Procedure S4402 (1981). Res judicata is often analyzed further to consist of two preclusion concepts: "issue preclusion" and "claim preclusion." Issue preclusion refers to the effect of a judgment in foreclosing relitigation of a matter that has been litigated and decided. See Restatement, supra, S27. This effect also is referred to as direct or collateral estoppel. Claim preclusion refers to the effect of a judgment in foreclosing litigation of a matter that never has been litigated, because of a determination that it should have been advanced in

an earlier suit. Claim preclusion therefore encompasses the law of merger and bar. See id., Introductory Note before S24. * * * *

Migra v. Warren City School Dist. Bd. of Educ., ___ U.S. ___, 104 S. Ct. 892, 894 n. 1. (1984). See also Kaspar Wire Works, Inc. v. Leco Engineering & Mach., Inc., 575 F.2d 530, 535-36 (5th Cir. 1978); Wright, Miller & Cooper, Federal Practice and Procedure: Jurisdiction S4402; Restatement (Second), Judgments S19 (1982).

This Court is unclear as to Rajaram's motives in originally filing this action in state court. Regardless of his reason, it is clear that this action presesnts issues of federal law, and for that reason the case was removed and remand was denied. 7 The conclusions of law and fact in my Report and Recommendation denying Rajaram's motion to remand this case to state court are not at issue, in that no exceptions to

that Report were filed. Fed. R. Civ. P. 72; Unite States v. Schronce, 727 F.2d 91 (4th Cir.1984), cert. denied, ___ U.S. ___, 104 S.Ct. 2395 (1984).

Rajaram's complaint, originally filed in state court is in two counts: In count I, Rajaram alleges that the Union defendants and associated individuals did not protect his interests and rights under the arbitration award, and further, that they failed to disclose information to him concerning the award. Rajaram also claims that those defendants failed to honor

7 See paper no. 23.

their contractual obligation to represent him in good faith. In count II, Rajaram alleges that Abell and two individuals failed to perform under the terms of the arbitration award.

C.

Rajaram's complaint in count I,

regarding the Union defendants' failure to protect his rights, is, in essence, an allegation of a breach of the union's duty of fair representation. This claim was dismissed in 80-0012 by Judge Black. 8 Rajaram's claim of fraudulent concealment (refusing to disclose the terms of the arbitration award) against both the union defendants and Abeil was also previously dismissed by the Court in 80-0012. 9

III.

The question now presented is whether, under the doctrine of res judicata, the Court's resolution of the same or similar issues in 80-0012 bars Rajaram from litigating the same in 84-2465. This Court believes that it does.

"To qualify for preclusion, a judgment must be valid, final, and on the merits." 18 Wright, Miller & Cooper, Federal Practice and Procedure: Juris--

diction S4432 (1981). There is no question that the Court's actions regarding Abell meet these criteria, because the judgment certainly was valid, final judgment was entered, and it was on the merits. The Court's decision regarding the Union defendants in 80-0012, although

8 See paper no. 155 in 80-0012.

9 See paper no.'s 154 and 155 in 80-0012. See also paper no. 150 in 80-0012.

valid and on the merits, was not a final judgment, and was thus not immediately appealable. See 28 U.S.C. S1291. However, for res judicata purposes, the finality requirement is met: Rajaram will not be prejudiced if his claims against the Union defendants in 84-2465 are barred. Because his claims in 84-2465 are the same as those in 80-0012, if and when final judgment regarding the Union defendants is entered in 80-0012,

Rajaram can appeal any part of that decision which is adverse to him. He therefore has the opportunity to obtain review on the same claim in 80-0012 that would now be barred in 84-2465. " 'Finality' in the context here relevant may mean little more than that the litigation of a particular issue has reached such a stage that a court sees no really good reason for permitting it to be litigated again." Lummus Co. v. Commonwealth Oil Refining Co., 297 F.2d 80,84 (1st Cir. 1961), cert. denied, 368 U.S. 986 (1962); see also, 18 Wright, Miller & Cooper, Federal Practice and Procedure: Jurisdiction S4434. Therefore, the Court's decision in 80-0012 with respect to the Union defendants meets the criteria necessary to apply res judicata to Rajaram's claims in 84-2465.

When Rajaram brought his first action, 80-0012, in this Court, he should

have been prepared to advance all of his theories, since this court has jurisdiction to afford full relief. Even if he had believed that his action contained both state and federal claims, there most probably would have been jurisdiction to apply both state and federal law under the doctrine of pendent jurisdiction. Accordingly, all of Rajaram's theories in 84-2465 should be precluded by the disposition of 80-0012.

Rajaram may argue that because the Court in 80-0012 denied some of his claims due to the expiration of the statute of limitations, the requirement of being "on the merits" was not met. However, where the action involves the same claim or cause of action, the court would merely look to the same source of limitations law: consequently preclusion should apply. Id. at S4441.

Rajaram may also argue that since

his action in 84-2465 was pending before 80-0012 was decided, it is not truly a second action. However, such an argument would not nearly reach the essence of res judicata, as described in The Restatement (Second), Judgments S19, comment a (1982):

> The rule that a defendant's judgment acts as a bar to a second action on the same claim is based largely on the ground that fairness to the defendant, and sound judicial administration, require that at some point litigation over the particular controversy come to an end. These considerations may impose such a requirement even though the substantive issues have not been tried, especially if the plaintiff has failed to avail himself of opportunities to pursue his remedies in the first proceeding, or has deliberately flouted orders of the court.

See, Adkins v. Allstate Insurance Co., 729 F.2d 974, 976 (4th Cir. 1984).

There may also be argument from Rajaram concerning the fact that, in 84-2465, several individuals were named as defendants who were not mentioned in 80-

0012: thus the use of res judicata against them should not be permitted. Although the traditional rules of res judicata viewed privity narrowly, such rules have been relaxed. See Blonder-Tongue Laboratories, Inc. v. University of Illinois Foundation, Inc., 402 U.S. 313 (1971); Adkins v. Allstate Insurance Co., 729 F.2d 974 (4th Cir. 1984); Gliedman v. Capital Airlines, Inc., 267 F. Supp. 298 (D. Md. 1967).

Moreover, the relationship between the named individual defendants and the entity defendants fails under the principle of "virtual representation." "The most pervasive principle that extends preclusion to non-parties relies on representation by a party." Wright, Miller & Cooper, Federal Practice and Procedure: Jurisdiction S4454. "Virtual representation" precludes relitigation of any issue that had once been adequately

tried by a person sharing a substantial identity of interests with a non-party. Id. at S4457. Therefore, even though the individual defendants may not have been mentioned in the decision of 80-0012, as employees or associates of the entity defendants they were represented by such entities, and they should also be able to raise the defense of preclusion by res judicata.

IV.

For the reasons stated above, I respectfully recommend that, upon the expiry of time allowed in Local Rule 82 and Fed. R. Civ. P. 72 for taking exception hereto, an order be entered granting defendant Abell's motion to dismiss, and dismissing case no. B-84-2465 in its entirety.

(Signature)
Frederic N. Smalkin
United States Magistrate

Dated: March 28th, 1985

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MARYLAND

KONDIAN R. RAJARAM,
on behalf of himself and all
others similarly situated,

Plaintiff, (sic)

v.

INTERNATIONAL TYPOGRAPHICAL
UNION, et al.,

Defendants

CIVIL ACTION (entered April 4, 1985)

NO. B-84-2465

ORDER

Upon consideration of Plaintiffs' Exceptions and Objections to Report and Recommendation of the United States Magistrate and the Company Defendants' Response thereto, it is by the Court, this day of April, 1985,

ORDERED, that Plaintiffs' Exceptions and Objections shall be, and the same hereby are, OVERRULED, IN THEIR

ENTIRETY; and it is further

ORDERED, that Magistrate Smalkin's recommended dismissal of Plaintiff Rajaram's claims against the Company Defendants on the ground of res judicata, as set forth in the Report and Recommendation of March 28, 1985, shall be, and hereby is, ADOPTED IN ITS ENTIRETY; and it is further

ORDERED, that FINAL JUDGMENT shall be, and hereby is, directed to be entered in favor of the Company Defendants and against Plaintiff Rajaram under Rule 54(b), F.R.Civ.P., there being no just reason for delay; and it is further

ORDERED, that Plaintiff Rajaram's counsel is directed to:

(1) Identify for the Court one or more unnamed class members who will seek leave to be substituted in this action as class representative(s) within three weeks of the entry of this Order; and

(2) Prepare, in affidavit form, a precise statement of each proposed class representative's claims, how many members are estimated to belong to the class, and why any claims under the 1977 arbitration award are not barred by the applicable six-month statute of limitations; and it is further

ORDERED, that a final decision on the class claims will be held in abeyance subject to receipt by the Court of the information requested herein of the class and its counsel, within three weeks of the entry of this Order; and it is further

ORDERED, that failure to provide this Court with sufficient information to determine the existence of a class and its parameters within three weeks of the entry of this Order will lead to the entry of judgment in favor of the Company Defendants on all class claims.

Walter E. Black, Jr.
United States District Judge

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MARYLAND

KONDIAN R. RAJARAM, Plaintiff

vs.

INTERNATIONAL TYPOGRAPHICAL UNION, and BALTIMORE TYPOGRAPHICAL UNION NO. 12, and SUNPAPERS CHAPEL OF BALTIMORE TYPOGRAPHICAL UNION NO. 12 and A.S. ABELL PUBLISHING COMPANY, et al

Defendants

CIVIL NO. B-84-2465

Baltimore, Maryland

April 11, 1986

REPORTER'S OFFICIAL TRANSCRIPT OF PROCEEDINGS (Opinion) (entered April 14, 1986)

BEFORE: THE HONORABLE WALTER E. BLACK, JR.

APPEARANCES:

For the Plaintiff:

EDWARD J. MAKOWSKI, JR., ESQUIRE

For the Defendants:

JEFFREY P. AYRES, ESQUIRE

BERNARD W. RUBENSTEIN, ESQUIRE

REPORTED BY: DONNA BECKER

O P I N I O N

JUDGE BLACK: Counsel, I will rule on this day by means of an informal opinion, reserving the right to edit that opinion if it is transcribed for any reason without in any way changing the result or the essential meaning.

Presently pending before the Court are plaintiff Kondian Rajaram's objections (paper 32) to the March 28, 1985 report and recommendation of Magistrate Frederic Smalkin.

The Magistrate recommended (paper 30), that the complaint be dismissed on the basis of res judicata. Having re-

viewed the briefs filed before the Magistrate, the Magistrate's report, and the briefs in response to that report, as well as the rest of the record, and having heard oral arbument today, the Court has decided to affirm and adopt the Magistrate's report, grant the motions to dismiss, and enter judgment in favor of the defendants.

The case comes before this court pursuant to the Federal Rules of Civil Procedure, Rule 72(b). The rule provides that upon objection to a recommended disposition by a magistrate on a dispositive motion, the district judge to whom the case is assigned shall make a de novo determination upon the record, or after additional evidence, of any portion of the magistrate's disposition to which specific written objection has been made in accordance with this rule.

The Court has engaged in such a

review.

Initially the Court would note that the plaintiff, a week prior to this hearing, filed a large stack of 55 exhibits. The Court has reviewed the exhibits but would note that they add little or nothing of significance to the record. In addition, the Court would note in passing that the exhibits were not available to the Magistrate.

Two motions to dismiss are pending. The primary motion is filed on behalf of plaintiff's former employer, the A.S. Abell Publishing Company, along with John Banach and Paul Bowen (paper number 6).

In addition, the union defendants, consisting of the International Typographical Union, the Baltimore Typographical Union Number 12, the Sunpapers Chapel of the Baltimore Typographical Union Number 12, as well as Theodore

Kees, Jack Poist, and Richard Brown, have all filed a joint motion to dismiss (papewr 7).

While the primary argument has been between plaintiff and the employer defendants, both motions are pending, and the issues are the same. It is not necessary, as the Magistrate suggested, to raise the issue of res judicata sua sponte for the union defendants, as a motion is in fact pending. Nevertheless, a sua sponte motion would, if necessary, be appropriate on the res judicata issue since all of the litigation in dispute has been before the same court. Boone vs. Kurtz, 617 F.2d 435, (Fifth Circuit, 1980).

A brief history of plaintiff's federal court actions is necessary. In particular, regarding a 1977 arbitration award involving plaintiff's union and employer. This arbitration award is at

the heart of the current complaint and motions to dismiss.

In January of 1980, plaintiff filed a complaint, B-80-0012, hereinafter referred to as Rajaram I, which, as later amended, included 16 counts. The defendants were his employer, A.S. Abell and various union defendants, including the International Union No. 12, (sic) the Sunpapers Chapel thereof, and Jack Poist. The complaint made general allegations of various discriminatory actions and actions violating federal labor law, which were to be supported by numerous specific incidents. The counts indirectly reference the 1977 award.

A.S. Abell filed a motion to dismiss Rajaram I, claiming that the statute of limitations had expired under DelCostello v. International Brotherhood of Teamsters, 462 U.S. 151 (1983). The Magistrate's report and recommendation,

dated October 18, 1983, recommended dismissal. That's paper number 107 in Rajaram I. This was affirmed and adopted by this Court by an order dated November 6, 1983 which was paper 113 in Rajaram I.

Rajaram then filed a motion to revise the order, claiming that new evidence regarding the 1977 arbitration award showed misrepresentation and fraudulent concealment so that the statute of limitations had not expired. The Magistrate's report and recommendation of December 14, 1984 recommended that dismissal still should occur. And it's paper 150 of Rajaram I.

The Magistrate's report stated that, "In his motion for revision, plaintiff claims that new evidence has been discovered that demonstrates misrepresentation and fraudulent concealment by Abell with respect to a 1977

arbitration award. Plaintiff asserts that such evidence would have a conclusive effect on the final determination of the merits of his claim."

The opinion dealt solely with the arbitration award evidence and found that the action was time barred.

This Court affirmed and adopted the Magistrate's report and recommendation on February 8, 1985 and then entered a Rule 54(b) judgment. Paper 154 in Rajaram I. An appeal was taken to the Fourth Circuit. And in an unpublished opinion on January 9, 1986, No. 85-1268, the Court found that the limitations period had expired. This opinion as well solely focuses on the 1977 arbitration award.

The union defendants in the first litigation also filed motions to dismiss, based on various grounds. The Magistrate's report and recommendation

of February 27, 1984 discussed the issues, and granted a dismissal of most of the plaintiff's complaint. Paper 133, Rajaram I. Among the claims dismissed were those dealing with the 1977 arbitration award. See in particular the discussion at pages 18 and 19. This Court again adopted the Magistrate's report and recommendation, and that's paper 155 in Rajaram I. All issues regarding the 1977 arbitration award have been dismissed.

The current litigation, Rajaram II, came to federal court on June 15, 1984. The two count complaint alleges that plaintiff's employer failed to follow the terms of the 1977 arbitration award and that the union did not fulfill its duty of fair representation. Many of the defendants are the same, including A.S. Abell, the International Typographical Union, the Baltimore Typographical

Union Number 12, the Sunpapers Chapel, and Jack Poist.

The general principles of res judicata are not in dispute. The doctrine of claim preclusion establishes that a final judgment on the merits will at times have preclusive effect over a later suit on the same transaction. Any issue that was litigated or could have been litigated is barred. Issue preclusion, by contrast, is more narrow, and stands for the principle that once an issue is litigated as part of one suit, it will not be relitigated in a suit involving related parties. See, for example, Migra vs. Warren City School District Board of Education, 104 S.Ct. 892 at 894, note 1, (1984); Allen v. McCurry, 449 U.S. 90 at 94-95 (1980); 18 Wright & Miller, Federal Practice and Procedure, Sections 4406 and 4416.

The question here is whether the

decision in Rajaram I should have preclusive effect on the current litigation, or whether there are other grounds for dismissal. This issue must be considered separately for the different defendants.

The considerations are simplest for A.S. Abell. There is no question that the earlier decision regarding A.S. Abell, which was initially issued as a Rule 54(b) judgment, has sufficient finality to be of preclusive effect. See, for example, Nixon vs. Richey, 513 F.2d 430 at 438, note 75, (D.C. Circuit 1975); Lummus Company vs. Commonwealth Oil Refining Company, 297 F.2d 80 at 89 (Second Circuit 1961). And 18 Wright & Miller, Federal Practice, Sections 4432 to 4434. In any event, plaintiff does not press any objection that there was no finality to the dismissal.

The dispute is therefore whether

the two cases arise out of the same set of facts so that res judicata should apply. The Court has no doubt that it should. Claim preclusion is appropriate. Examination of the facts, and, in particular, the complaints and the decisions in Rajaram I, show beyond all doubt that the 1977 arbitration award was throughly discussed and litigated in the prior suit. Plaintiff presents facts about the arbitration award in support of his substantive claim and in an attempt to support his claim that the statute of limitations had not run. To the extent, if any, that the arbitration award was not discussed, it was an intimate part of the same transactions and set of facts as the other allegations in the complaint that were dismissed. Claim preclusion must apply.

Even if this were not true, there is no doubt that issue preclusion would

apply on the statute of limitations issue. As a result, the Court would have to find that the limitations issue had previously been decided as a necessary part of the first decision, and that the claims in this litigation are time barred. The Fourth Circuit opinion, and the opinions it affirms, all explicitly deal with the tolling of limitations or events surrounding the 1977 arbitration award.

Independent of this, and even if res judicata did not apply, the claims would still be time barred. This is a combined action for breach of the duty of fair representation combined with violations of Section 301. So the six month limitations period specified in DelCostello must apply and not a state law period. See on a similar point Samples vs. Ryder Truck Lines, Inc., 755 F.2d 881, at 887 and 888 (Eleventh

Circuit 1985); Taylor vs. Ford Motor Company, 761 F.2d 931 at 933 (Third Circuit 1985).

This litigation on the 1977 arbitration award far exceeds the applicable time limit and, in fact, would even exceed a three year state limitations period. Plaintiff argues that the limitations period has tolled. But the court, having reviewed the issues, disagrees. It would not be productive to detail the reasons the period has run.

The Court is convinced that the same reasoning applicable in the decisions of Rajaram I would be equally applicable to all of the defendants in this action. In particular, it might be noted that the Fourth Circuit opinion states that plaintiff "had sufficient notice of the arbitration award in 1978 to require him to make further inquiry as to its terms." That's Rajaram I at

page 10. On all of the evidence available, the Court finds that the limitations period has expired for all defendants.

For any of the above reasons, the complaint against A.S. Abell must be dismissed.

The claims against defendants Banach and Bowen, who are associated with A.S. Abell, pose a somewhat related situation, even though they were not formally defendants in the prior litigation. Again, the Court feels that dismissal is appropriate.

There is no requirement of privity in order for res judicata to apply. Blonder-Tongue vs. University of Illinois Foundation, Inc., 402 U.S. 313 (1971). In this litigation and the prior suit, Banach and Bowen share substantially similar interests with A.S. Abell, and so the defense by A.S. Abell

in Rajaram I allows a res judicata defense by the two individuals in this new suit. In addition, the principle of virtual representation by A.S. Abell may cause res judicata to be applicable, referring to Wright & Miller, Federal Practice, Section 4457.

For either of these reasons, a defense based on claim preclusion or issue preclusion for the limitations dispute is valid for these individual defendants. Independent of this, the Court finds that the two individuals are not proper defendants in this litigation.

Plaintiff's suit is for failure to follow an arbitration award. As will be discussed in more detail, and as was properly decided by the Magistrate, the litigation involves claims under Section 301 of the Labor Management Relations Act, 29 U.S.C, (sic) Section 185. For

suits under 301, however, only the employer is a valid party defendant. The Act was not designed to impose personal liability on employees of corporate organizations. That's a quote from Ramsey vs. Signal Delivery Service, Inc., 631 F.2d 1210 at 1212 (Fifth Circuit 1980). See also Loss vs. Blankenship, 673 F.2d 942 at 946 through 948 (Seventh Circuit 1982). The two individuals are not proper defendants.

Finally, as another ground for dismissal, the Court once again feels that the statute of limitations, irrespective of any res judicata defense, makes this action time barred. The reasons are the same as noted previously.

The next defendants to consider are the three unions, as well as Poist, who is associated with the unions. These are the defendants who were also union defendants in the prior lawsuit. Dis-

missal of them is also appropriate.

The decisions in the prior action dismissed the claims against the union defendants on the 1977 arbitration award, and those decisions have finality and act as a bar to relitigating plaintiff's contentions. See, for exsample, Nixon vs. Richey and Lummus Company vs. Commonwealth Oil Refining Company, as well as Wright & Miller, Sections 4432 and 34. As noted before a review of the record in the first case shows that the issues were thoroughly discussed and litigated. Any issues not raised should have been raised. Claim preclusion must apply.

The Court would also note that issue preclusion would independently apply to the statute of limitations issue. As with Banach and Bowen, the union defendants had substantially similar interests in the prior litigation on this one

issue as A.S. Abell, and the concept of virtual representation may apply, all of which would bar reconsideration of whether this action is time barred.

In addition, the statute of limitations issue is mentioned by the Magistrate in his report and recommendation regarding the union defendants. On all of these bases, issue preclusion would mandate that the time for bringing plaintiff's claim is deemed to have expired.

In addition, even if there is no issue preclusion, the Court still finds, for the reasons detailed previously, that the litigation is not timely. The statute of limitations has in fact expired.

Finally, there are the two individual defendants, Kees and Brown, who are associated with the unions. The complaint should also be dismissed as to

them, for similar reasons as for the other defendants.

First, their interests were and are substantially similar to those of the unions and of Poist on all issues, and to those of A.S. Abell on the limitations issue. The argument is the same as noted previously. The net result is that claim preclusion applies, as well as issue preclusion, and so plaintiff is precluded from pursuing litigation against these defendants.

In addition, the Court once again feels that statute of limitations has expired, independent of any res judicata argument. Dismissal is appropriate for this reason as well.

Plaintiff next argues that dismissal is improper beacause he has requested class certification and the interests of the class members have not been previously adjudicated. This argument is

also invalid.

No class certification has occurred as of yet. The Court is highly doubtful that such certification would be appropriate under Rule 23. There are only 24 possible people in the class, making joinder a feasible alternative. In addition, plaintiff's prior case and the res judicata defenses arising from it make him an atypical class representative.

Last, it is unclear whether plaintiff fairly and adequately represents the class, especially in light of his focus on his individual claims.

Nevertheless, the Court will not rule on the issue of certification, for, in any event, the Court must judge the motions to dismiss relative to the only named plaintiff. The claims of that named plaintiff, Rajaram, fail for the reasons outlined before.

There is no indication that any other potential class members are interested in pursuing this litigation, and so the complaint can be dismissed. The Court would note that the defendants suggested in a reply brief dated April 12, 1985, a year ago, that if any other class members besides Rajaram wished to pursue the litigation, they might validly step forward. No one has done so.

There is also no prejudice that would result from dismissing the suit as a whole. It is apparent that no other persons are relying on plaintiff for pursuit of their claims. And, indeed, all indications are that only Rajaram has an interest in this litigation. Absent any possible prejudice, involuntary dismissal of the complaint is appropriate, even without notice to any other potential class members. Robinson vs. First National City Bank, 482 F.

Supp. 92 at 99 - 101 (Southern District of New York 1979). See Maddox & Starbuck, Limited vs. British Airways, 97 F.R.D. at 395, 397 (Southern District of New York 1983); Bantolina vs. Aloha Motors, Inc., 75 F.R.D. 26 (District of Hawaii, 1977). See also Shelton vs. Pargo, Inc., 582 F.2d 1298 at 1303 (Fourth Circuit 1978).

To the extent that any other person may wish to pursue the complaint, the limitations period has tolled during the pendency of this suit, further minimizing any prejudice due to dismissal. American Pipe and Construction Company vs. Utah, 414 U.S. 538 at 551, 552 (1974).

Therefore, despite the request for class certification, the complaint can still be dismissed.

Finally, plaintiff, in a supplemental memorandum (paper 38), alleges

that this litigation should be in state, not federal court, and that there are merely violations of state law. The Court disagrees and feels that the complaint raises federal labor law issues. The case relied upon by plaintiff, Cook vs. Georgetown Steel Corporation, 770 F.2d 1272 (Fourth Circuit 1985), is of no assistance. That case merely reaffirms the well pleaded complaint rule stating that federal jurisdiction must be apparent from the face of the complaint. Federal issues are raised by the complaint, namely, issues of the duty of fair representation and of the 301 rights under a labor contract, no matter whether the contract be the collective bargaining agreement or another agreement. And therefore jurisdiction is appropriate.

In addition, the Court would note that plaintiff cannot at this time ob-

ject to jurisdiction since the Magistrate's report and recommendation of February 1, 1985 decided this issue. Paper 23. Plaintiff at no time filed objections to the Magistrate's report, and the ten day period to object to non-dispositive motions expired. Therefore the prior holding must stand. United States vs. Schronce, 727 F.2d 91 (Fourth Circuit 1984).

The motions to dismiss will be granted. The Magistrate's report and recommendation will be affirmed and adopted, and judgment will be entered in favor of the defendants. Plaintiff's objections to the Magistrate's report and recommendation are denied.

And the Court will enter a formal order in conformity with that opinion.

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MARYLAND

KONDIAN R. RAJARAM

v.

INTERNATIONAL TYPOGRAPHICAL UNION, BALTIMORE TYPOGRAPHICAL UNION NO. 12, SUNPAPERS CHAPEL OF BALTIMORE TYPOGRAPHICAL UNION NO. 12, A. S. ABELL PUBLISHING COMPANY, THEODORE J. KEES, JACK POIST, JOHN BANACH, PAUL C. BOWEN, and RICHARD BROWN

CIVIL ACTION NO. B-84-2465

(entered April 22, 1986)

ORDER AND JUDGMENT

Upon consideration of Plaintiffs' Exceptions and Objections to Report and Recommendation of the United States Magistrate, the responses thereto, and the record, and having heard the oral arguments on behalf of all interested parties at a hearing on April 11, 1986; in accordance with the Court's oral opinion rendered at the conclusion of

the said hearing, IT IS, this 21 day of April, 1986, ORDERED and ADJUDGED:

1. That Plaintiffs' Exceptions and Objections to Report and Recommendation of the United States Magistrate [Frederic N. Smalkin] (Paper 32), purportedly filed by plaintiff, Kondian R. Rajaram, on behalf of a class, but treated by the Court as filed on plaintiff's behalf alone, BE, and the same hereby ARE, OVERRULED and DENIED.

2. That the Magistrate's Report and Recommendation (Paper 30), of United States Magistrate Frederic N. Smalkin, dated March 25, (sic) 1985, BE, and the same hereby IS, AFFIRMED and ADOPTED in its entirety.

3. That the Motion of Defendants A. S. Abell Publishing Company, John Banach, and Paul C. Bowen to Dismiss or, Alternatively, for Summary Judgment, and for an Award of Expenses, Including At-

torneys' Fees (Paper 6)--being treated as a motion to dismiss--BE, and the same hereby IS, GRANTED, EXCEPT that portion of the motion relating to expenses, including attorneys' fees, which portion of the motion BE, and the same hereby IS, DENIED.

4. That the Motion to Dismiss (Paper 7), filed on behalf of defendants, International Typographical Union, Baltimore Baltimore Typographical Union No. 12, Sunpapers Chapel of Baltimore Typographical Union No. 12, Theodore J. Kees, Jack Poist, and Richard Brown, BE, and the same hereby IS, GRANTED.

Re: Rajoram (sic) v. International Typographical Union, et al.
Civil No. B-84-2465

5. That judgment BE, and the same hereby IS, ENTERED in favor of the defendants, International Typographical Union, Baltimore Typographical Union No. 12, Sunpapers Chapel of Baltimore Typo-

graphical Union No. 12, A. S. Abell Publishing Company, Theodore J. Kees, Jack Poist, John Banach, Paul C. Bowen, and Richard Brown, against the plaintiff, Kondian R. Rajoram. (sic)

6. That plaintiff's complaint against all of the defendants BE, and the same hereby IS, DISMISSED WITH PREJUDICE.

7. That the Clerk shall transmit copies of this Order and Judgment to counsel of record for all of the parties to this action.

(Signature)
Walter E. Black, Jr.
United States District Judge

UNPUBLISHED

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

No. 86-1161

Kondian R. Rajaram, Plaintiff-

Appellant,

versus

International Typographical Union; Baltimore Typographical Union No. 12; Sunpapers Chapel of Baltimore Typographical Union No. 12; A. S. Abell Publishing Company; Theodore J. Kees; Jack Poist; John Banach; Paul C. Bowen; Richard Brown,

Defendants - Appellees.

Appeal from the United States District Court for the District of Maryland, at Baltimore. Walter E. Black, Jr., District Judge. (C/A No. 84-2465-B)

Submitted: November 28, 1986

Decided: June 25, 1987

Before RUSSELL and WIDENER, Circuit Judges, and BUTZNER, Senior Circuit Judge.

(Kondian R. Rajaram, Appellant Pro Se. Bernard Wolf Rubenstein, Abato, Rubenstein & Abato, PA; Brian A. Powers,

O'Donoghue & O'Donoghue; Jeffrey Peabody Ayres, Stanley Mazaroff, Venable, Baetjer & howard, for Appellees.)

PER CURIAM:

A review of the record and the district court's opinion accepting the recommendation of the magistrate discloses that this appeal from that court's order dismissing the complaint is without merit. We therefore deny leave to proceed in forma pauperis and dismiss the appeal on the reasoning of the district court. Rajaram v. International Typographical Union, C/A No. 84-2465-B (April 22, 1986). We deny the request of A. S. Abell Publishing Company, John Banach and Paul C. Bowen for attorney's fees. We dispense with oral argument because the facts and legal contentions are adequately developed in the materials before the Court, and argument would not aid the deci-

sional process. DISMISSED

IN THE CIRCUIT COURT FOR BALTIMORE CITY

CASE NO.: 84-135042/L20441

KONDIAN R. RAJARAM, Plaintiff,

v.

A.S. ABELL PUBLISHING COMPANY, Defendant.

ORDER

Upon consideration of Defendant's Motion to Dismiss or, Alternatively, for Summary Judgment, Plaintiff's Opposition thereto, and the memoranda and materials provided by the parties in support of their positions, and having heard the oral arguments of both sides, it is by the Court, for the reasons provided at the hearing of April 23, 1986, this 23rd day of April, 1986,

ORDERED, that Defendant's Motion shall be, and the same hereby is, GRANTED; and it is further

ORDERED, that this entire lawsuit shall be, and (sic) hereby is, DISMISSED WITH PREJUDICE; and it is further

ORDERED, that Plaintiff's Request for Class Certification shall be, and the same hereby is, DENIED; and it is further

ORDERED, that JUDGMENT shall be, and the same hereby is, ENTERED in favor of Defendant and against Plaintiff on all claims, on all relief, and with respect to this entire action; and it is further

ORDERED, that the Clerk shall forthwith ENTER THE JUDGMENT in accordance with Maryland Rule 2-601.

JUDGE JOSEPH H.H.KAPLAN
Joseph H. H. Kaplan
Administrative Judge

3875d

IN THE CIRCUIT COURT FOR BALTIMORE CITY

KONDIAN R. RAJARAM

vs.

A. S. ABELL PUBLISHING COMPANY

CASE NO.: 84135042/L 20441

REPORTER'S OFFICIAL TRANSCRIPT

April 23, 1986

Baltimore, Maryland

BEFORE: THE HONORABLE JOSEPH H. H. KAPLAN, JUDGE

APPEARANCES:

On behalf of the plaintiff:

EDWARD J. MAKOWSKI, ESQUIRE

On behalf of the Defendant:

JEFFREY P. AYRES, ESQUIRE

REPORTED BY: A. M. GREAVER

Official Court Reporter

* * * *

(at pages 21-24)

...

THE COURT: And I have heard you all on the merits of the motion to dismiss. I have reviewed the motion to dismiss and considered the responses to

that motion, and I am satisfied that the federal claims and judgments are at issue here and that, because they are at issue here, the federal principles of res judicata and limitations apply.

Even if federal limitations did not apply, state limitations would preclude this cause of action. This lawsuit is barred by federal res judicata principles of claim preclusion. This is because Judge Black's finding of claim preclusion in plaintiff's second federal lawsuit is, itself, res judicata in the case at bar.

The lawsuit, this lawsuit is also barred by federal res judicata principles of issue. This is because of the res judicata effect of final judgments in the plaintiff's two federal lawsuits, both of which held that the plaintiff's claims were barred by limitations and that plaintiff failed to show that A. S.

Abell had fraudulently concealed the 1977 arbitration award.

Even if plaintiff's claims are not barred by res judicata, they are barred by both the federal six month statute of limitations and the applicable state period of limitations. As you both know, in the first federal case, the Fourth Circuit Court of Appeals held that the six month limitation period applies to Taft-Hartley Act violations. Accordingly, this entire lawsuit should be dismissed, notwithstanding the purported class claims.

Under my conclusion that Judge Black's decison in the second federal case, dismissing the case, notwithstanding the purported class claims, binds this Court under the principles of res judicata, and as I have indicated, even if res judicata doctrine does not apply, the purported class is too small for

certification, that is 24 people, and plaintiff cannot adequately represent a class, and no other class members have pursued an interest in this case.

For the foregoing reasons and those set forth in the defendant's motion, the Court will grant that motion to dismiss and dismiss this case.

Mr. Ayres, if you will prepare an order in accordance with my ruling, I will sign it.

MR. AYRES: Yes, Your Honor.

THE COURT: Thank you, gentlemen.

MR. MAKOWSKI: Thank you, Your Honor.

THE COURT: We will stand in recess.

(Proceedings concluded.)

REPORTER'S CERTIFICATE ...

A. M. Greaver Official Court Reporter

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 836

September Term, 1986

KONDIAN R. RAJARAM, ET AL

V.

A. S. ABELL PUBLISHING COMPANY

Gilbert, C.J.,
Weant,
Garrity,
JJ.

Per Curiam

Filed: March 23, 1987

Until 1978, when "substitute" work was eliminated, the appellant, Kondian R. Rajaram, worked for the appellee, A. S. Abell Publishing Co. (Sunpapers), as a "substitute" employee. In 1984, Rajaram brought suit against the Sunpapers over a 1977 labor arbitration award between the company and Rajaram's union, on the issue of "substitute" work. This appeal is from the third law suit which had been filed by

the appellant, in which the appellee was named respondent, over the 1977 award. Both of the prior suits were ultimately (sic) dismissed on the grounds of res judicata and limitations. We are asked to determine whether the lower court properly dismissed the present law suit on the grounds of res judicata.

Facts

In 1977 an arbitration award was issued against the Sunpapers for violating a labor contract by refusing to hire substitutes, like the appellant, on or after December 2, (sic) 1976. After receiving this award the Sunpapers advised the appellant's union that it "could not live with the terms of the award." The union was (sic) unable to force compliance with the award. Grievances and a charge were filed with the National Labor Relations Board

(NLRB). The NLRB ultimataely refused to issue a complaint and dismissed the charge. In July, 1978, the Sunpapers negotiated a new collective bargaining agreement which by its terms was effective from January 1, 1977, and thereby obviated (sic) the 1977 arbitration award. The new agreement permitted the elimination of substitute work and provided that those substitute employees who resigned would receive a lump sum payment of $1,500 in severance pay. The appellant elected to resign and accept the $1,500 payment. The agreement further secured payment to the substitutes for wages lost during (sic) the negotiation period. Thereupon, the Union dismissed the federal law suit requesting confirmation of the arbitration award against the Sunpapers.

The appellant's first law suit, which was filed in federal court, named

his former (sic) union, various union officials, and the Sunpapers as respondents. The gravamen (sic) of his claims was that the elimination of substitute work had been "motivated by intentional discrimination." Magistrate Smalken (sic) recommended dismissal of claims against the Sunpapers on the grounds that many had been barred by limitations or were completely speculative. Upon adoption of the magistrate's recommendations, the Sunpapers were dismissed from the case.

Eleven months later the appellant moved to vacate the Sunpapers dismissal based upon newly discovered evidence, that being the 1977 arbitration award which the appellant claimed was maliciously concealed from him by the Sunpapers. The magistrate recommended denying the appellant's motion and the court adopted his recommenda-

tions. The appellant appealed to the United States Court of Appeals for the Fourth Circuit where the lower court's ruling was affirmed on the grounds that the appellant did not establish that the Sunpapers had fraudulently concealed the arbitration award.

The appellant's second law suit was filed in the Circuit Court for Baltimore City but removed to the federal court. Again the Sunpapers was one of the named respondents. The appellant claimed that the Sunpapers failed to follow the 1977 arbitration award and concealed information about the award from him. Magistrate Smalken (sic) recommended that this law suit be dismissed on res judicata grounds. The recommendation was adopted by the court since the two cases "[a]rose out of the same set of facts." (sic) The court held that the first case barred the second suit

under principles of claim preclusion and that the factual findings in the first case barred the claims in the second case on all limitation issues, as well as under res judicata principles of "issue preclusion."

The third law suit, with which we are concerned, was initiated similtaneously (sic) with the second law suit. The pleadings and summonses from both the second and third law suits were delivered to the Sunpapers simultaneously. Because there were three Sunpapers defendants in the second suit, each defendant received a set of the pleadings. Because there was only one Sunpapers defendant in the third suit, only one set of the pleadings was sent. The resident agent received one set of pleadings from each suit; however, due to the similarities in the pleadings and the volume of the exhibits, when the

pleadings (all four sets) were forwarded to the Sunpapers' Director of Labor Relations, the one set of pleadings from the third suit was overlooked. As a result only the pleadings from the second suit were forwarded to the Sunpapers' outside counsel, venable, Baetjer, and Howard.

Due to the Sunpapers failure to file a responsive pleading to the third law suit the appellant filed a Request for Order of Default on July 26, 1984. On September 11, 1984, the Order was signed and three days later a Notice of Default was issued. The notice was sent to the Sunpapers' general address to no one's attention. Two months later the notice had not reached anyone in authority at the Sunpapers.

In the meantime, on August 2, 1984, the appellant was successful in having an order signed which confirmed

the arabitration award and directed that judgment be entered "in conformity therewith." No one, including the appellant, attempted or purported to give notice of this order to the Sunpapers or its counsel. Furthermore, the order did not address the appellant's request for various other forms of relief. On September 13, 1984, the appellant's request for enforcement of the arbitration award was referred to an auditor to determine the amounts due. Again, no attempt was made to notify the Sunpapers or its counsel of the referral order. The auditor never made the determinations necessary "to enable the court to enter judgment" under Rule 2-613(e). Furthermore, the appellant never requested that judgment by default be entered and consequently it never was.

It was October 15, 1984, before the Sunpapers' counsel received knowl-

edge that an Order of Default had been entered against the Sunpapers in a third law suit of which he had no record. Counsel for the Sunpapers immediately prepard motions to vacate the confirmation and default orders and to stay the scheduled auditor's hearing on October 17, 1984. All motions were filed the following morning, with the motion to stay the auditor's proceedings immediately granted until the motion to vacate was resolved. After further briefing and a non-evidentiary hearing, the confirmation and default orders of August 2 and September 11, respectively, were vacated by Judge Kaplan who found that notice of the default proceeding had not been sent to the proper parties.

The appellant appealed the lower court's decision but conceded that the confirmation default orders did not finally dispose of all claims by and

against all parties. As a result the Sunpapers moved to dismiss the appeal for lack of final judgment. That motion was granted on June 26, 1985.

Thereafter, on April 23, 1986, this third law suit was dismissed and Rajaram's request for class certification was denied. The lower court held that Rajaram's claims were barred by federal res judicata and limitations principles. It was noted that Judge Black's dismissal of the second case, notwithstanding the class claims, was binding under res judicata principles. It was further noted that certification should be denied because a putative class of 24 members was too dsmall, Rajaram could not adequately represent the class, and no other class member had pursued any interest in the case.

Discussion of Law

The appellant argues the court's

finding was erroneous because of the finality of the arbitration award and the enrolled confirmation judgment. He claims that the appellee's failure to timely move to vacate, modify, or correct the arbitration award or to set aside the default judgment precludes the lower court's finding that there were irregularities which warranted dismissal.

Throughout his brief the appellant argues that Judge Kaplan vacated a final judgment; however, Rules 2-613(e) and 2-602 make it clear that a final judgment had not been entered. Rule 2-613(e) specifically provides:

> Entry of Judgment. -- If a motion [to vacate an order of default] was not filed under section (c) of this Rule or was filed and denied, the court, upon request, may enter a judgment by default. (emphasis added).

The appellant never requested a judgment by default. Furthermore, a final judg-

ment was not possible when the confirmation and default orders were entered and vacated because of Rule 2-602 which states:

> [A]n order or other form of decision, however designated, that adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties shall not terminate the action as to any of the claims or parties and is subject to revision at any time before the entry of judgment that adjudicates all the claims and the rights and liabilities of all the parties.

Consequently, the orders of August 2 and September 11 were "subject to revision at any time before entry" of final judgment under Rule 2-602. Furthermore, as the appellant's claims were found to have occurred in 1978, his pleadings were time barred on their face and any default judgment based on them was null and void. United States v. Lucas, 516 F. Supp. 934, 939 n. 1 (Ed. Text. 1981).

The appellant claims that the

circuit court erroneously denied his motion for reconsideration. But, as we noted above, the confirmation and default orders were interlocutory and, therefore, subject to the broad discretionary power of the lower court.

The appellant continually asserts that the Sunpapers waived its limitations and res judicata defenses. He contends that the Sunpapers did not file to vacate or alter the arbitration award within the time restraints of federal case law or Maryland law; consequently, he argues that the Sunpapers' limitations defense was waived.

As the appellee notes, under the appellant's waiver argument

> a plaintiff could sue in 1890 to confirm an arbitration award rendered in 1880 and lose on the merits. In 1920 that plaintiff could sue again to confirm the award and lose again. The plaintiff could then sue a third time in 1986 and prevail because the defendant supposedly waived its limitations in res

> judicata defenses by not suing to vacate the arbitration award in 1880 when it was awarded.

This hypothetical demonstrates why the appellant's waiver argument is meritless.

We note, furthermore, that the court found that the appellant had an ample opportunity to inquire about the arbitration award yet failed to do so within the statutorily provided period of time. Consequently, as we noted above, the appellant's pleadings were null and void. We, therefore, conclude that the lower court properly accepted limitations as a defense of the Sunpapers.

The appellant was denied class certification and contends that the denial was improper. He asserts essentially that there are no numerosity requirements for class certification and that classes with less than 24

members have been approved. He fails, however, to address the court's additional findings that he is not representative of the class and that no putative class member has expressed any interest in prusuing the case. Nonetheless, as the appellant has admitted that he probably could not adequately represent the interests of the other class members, we believe the lower court properly denied his request for class certification.

JUDGMENT AFFIRMED.
COSTS TO BE PAID
BY APPELLANTS.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

KONDIAN R. RAJARAM

vs. (entered 8-13-1982)

INTERNATIONAL TYPOGRAPHICAL
UNION; and BALTIMORE
TYPOGRAPHICAL UNION NO. 12;
and SUNPAPERS CHAPEL OF

BALTIMORE TYPOGRAPHICAL
UNION NO. 12; and JACK POIST
and GARY KIDWELL

CIVIL NO. B 80-0012

O R D E R

Following a status conference and hearing held today before me at which Mr. Rajaram appeared in person and Mr. Rubenstein, on behalf of all defendants, it is hereby ORDERED, this 13th day of August, 1982:

1. That the defaults heretofore entered against the defendants BE, and the same hereby ARE, set aside, pursuant to FED. R. CIV. P. 55(c), for good cause having been shown; the good cause consisting of the prolixity of the complaint, its failure to set forth a short statement of the claim, and, in the interests of justice, the defendants may have a meritorious defense;

2. That defendants' Motion to Dismiss the Compalint (sic) for failure to

comply with FED. R. CIV. P. 8(a)(2) and (3), BE, and the same hereby IS, GRANTED, with leave of court to file an amended complaint within 45 days of today, to relate back pursuant to FED. R. CIV. P. 15;

3. That no further discovery in the case will be had until further order of court; and

4. That the Clerk of Court mail copies of this Order to plaintiff and to counsel for the defendants.

(Signature)
Frederic N. Smalkin
United Stataes Magistrate

UNITED STATES DISTRICT COURT
244 U.S. COURTHOUSE
101 W. LOMBARD STREET
BALTIMORE, MD 21201-2691

FREDERIC N. SMALKIN
UNITED STATES MAGISTRATE

FTS TELE: 922-3840
TELE: (301) 962-3840

December 9, 1982

Phillip Mizrach, Esquire
1746 Eastern Avenue
Baltimore, MD 21231

Bernard W. Rubenstein, Esquire
10 Light Street, Suite 2400
Baltimore, MD 21202

Re: Rajaram v. ITU, etc.
Civil No. B 80-0012

Gentlemen:

I have considered plaintiff's motion for reconsideration and modification, filed September 10, 1982. In view of the fact that plaintiff has filed an amended complaint, and seeks to file a second amended complaint, there would be no need to reconsider so much of my order of August 13, 1982 as dismissed the original complaint.

With regard to setting aside the defaults entered against the defendants, I found in my order of August 13, 1982, adequate good cause for setting aside the defaults pursuant to FED. R. CIV. P. 55(c). Upon reconsideration, I am still of the view that the defaults should

have been set aside.

Therefore, by this letter ruling, I am denying plaintiff's motion for reconsideration and modification, filed September 10, 1982.

Very truly yours,

(Signature)
Frederic N. Smalkin

FNS/skp

cc Ronald rosenberg, esquire
Court File

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MARYLAND

KONDIAN R. RAJARAM, (entered 2-19-1985)

Plaintiff FEB 15 1985

v.

INTERNATIONAL TYPOGRAPHICAL UNION, et al.,

Defendants

CIVIL No. B-80-0012

ORDER

Upon consideration of the parties' Exceptions and Objections to the Report and Recommendation of the United States Magistrate, and the responses thereto, and having heard the respective oral arguments of all interested parties, at a hearing on February 13, 1985; in accordance with the Court's oral opinion rendered at the conclusion of oral argument, it is, this 15th day of February, 1985, ORDERED:

1. That Plaintiff's Exceptions and Objections to the Report and Recommendation BE, and the same hereby ARE, OVERRULED;

2. That summary judgment for defendants BTU-12, Jack Poist and Gary Kidwell, with respect to Plaintiff's Title VII claim concerning the Union by-law provision BE, and the same hereby IS, GRANTED;

3. That Defendants' Exceptions and

Objections to the Report and Recommendation in all other respects BE, and the same hereby ARE, OVERRULED;

4. That the recommended disposition in Magistrate Smalkin's Report and Recommendation of February 27, 1985 (sic) BE, and the same hereby IS, ADOPTED IN ITS ENTIRETY; and

5. That the Clerk of Court shall mail copies of this Order to counsel for the parties.

(Signature)
Walter E. Black, Jr.
United States District
Judge

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MARYLAND

Entered APR 20 1987

KONDIAN R. RAJARAM Plaintiff

v.

INTERNATIONAL TYPOGRAPHICAL UNION;

BALTIMORE TYPOGRAPHICAL UNION NO. 12;
(sic);
JACK POIST and
GARY KIDWELL

Defendants

CIVIL NO. B-80-0012

O R D E R

Presently pending in the captioned case is Defendants' Motion to Dismiss filed pursuant to Rule 41(b) of the Federal Rules of Civil Procedure. The motion to dismiss was filed after the close of the plaintiff's case in the nonjury trial of the captioned case. The Court had the benefit of oral argument on behalf of all parties and is satisfied that upon the facts as presented by the plaintiff in his case-in-chief, and upon the law, the plaintiff has shown no right to relief.

In accordance with the oral opinion rendered by the Court on April 15, 1987,

IT IS, this 16th day of April, 1987, by the United States District Court for the District of Maryland,

ORDERED:

(1) That the Defendants' Motion to Dismiss BE, and the same hereby IS, GRANTED;

(2) That the Second Amended Complaint (Paper 53) BE, and the same hereby IS, DISMISSED in full WITH PREJUDICE; and

(3) That the Clerk shall mail copies herewith to counsel of record.

(Signature)
Walter E. Black, Jr.
United States District Judge

UNPUBLISHED

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

No. 87-1078

KONDIAN R. RAJARAM Plaintiff-Appellant

v.

INTERNATIONAL TYPOGRAPHICAL UNION;
BALTIMORE TYPOGRAPHICAL UNION NO. 12;
SUNPAPERS CHAPEL OF BALTIMORE TYPOGRAPHICAL UNION NO. 12;
JACK POIST;
GARY KIDWELL Defendants-Appellees

and

A. S. ABELL PUBLISHING COMPANY
Defendant

Appeal from the United States District Court for the District of Maryland, at Baltimore. Walter E. Black, Jr., District Judge. (C/A No. 80-12-B)

Submitted: May 24, 1988

Decided: July 15, 1988

Before RUSSELL and WIDENER, Circuit Judges, and BUTZNER, Senior Circuit Judge.

Kondian R. Rajaram, Appellant Pro Se.

Bernard Wolf Rubenstein; Brian A. Powers (ABATO, RUBENSTEIN & ABATO, PA) for Appellees.

PER CURIAM:

Kondian R. Rajaram appeals from the district court's order dismissing his complaint alleging claims under 42 U.S.C. SS 1981, 1985, 1986, 2000e, and 29 U.S.C. SS 185 and 401, et seq. Our review of the record, including the district court's opinions and the magistrate's recommendations, discloses that this appeal is without merit. Accordingly, we affirm on the reasoning of the district court. Rajaram v. International Typographical Union, C/A No. 80-12-B (D. Md. April 15, 1987). We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the Court and argument would not aid the decisional process. Appellees' motion for attorney's fees is denied.

AFFIRMED.

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

No. 87-1078

FILED

AUG 16 1988

U.S. Court of Appeals

Fourth Circuit

Kondian R. Rajaram,

Plaintiff - Appellant,

v.

International Typographical Union, et al,

Defendants - Appellees,

and

A. S. Abell Publishing Co.,

Defendant.

On Petition for Rehearing with Suggestion for Rehearing In Banc

The appellant's pro se (sic) petition for rehearing and suggestion for rehearing in banc were submitted to this Court. As no member of this Court

or the panel requested a poll on the suggestion for rehearing in banc, and

As the panel considered the petition for rehearing and is of the opinion that it should be denied,

IT IS ORDERED that the petition for rehearing and suggestion for rehearing in banc are denied.

Entered at the direction of Judge Russell, with the concurrence of Judge Widener and Senior Judge Butzner.

For the Court

JOHN M. GREACEN

CLERK

International TYPOGRAPHICAL Union
THOMAS W. KOPECK, Secretary-Treasurer,
P.O. Box 234[illegible], Colorado Springs, Colo.
80901 - Phone (303) 471-2460

12

January 10, 1978

Kondian R. Rajaram, Appellant
P.O. Box 511
Baltimore, Maryland 21203

Dear Brother Rajaram:

This is to acknowledge your letter dated January 4, 1978, in which you questioned how many avenues were available to you for appealing decisions of the union beyond the scope of the union.

Article V, Section 43, ITU Bylaws states:

> In no case shall a member appeal to a civil court or any other agency for redress from an action by the union until he has exhausted his rights of appeal under the laws of the International Union. Any member who violates this section shall be liable to summary expulsion by the Executive Council.

Your question as to why the Executive Council calls the local union the respondent is simply because you appealed

a decision of the local union, therefore you are the appellant, and the local union responded to your appeal, therefore making it the respondent.

With kind regards, I am

Fraternally yours,

(Signature)
Thomas W. Kopeck
Secretary-Treasurer

3-18
cc: President No. 12

PLEASE PRINT OR TYPE

APPROVED BY GAO

B-180541 (RO511) Expires 1-31-81

CHARGE OF DISCRIMINATION

IMPORTANT: This form is affected by the Privacy Act of 1974; see Privacy Act Statement on reverse before completing it.

CHARGE NUMBER(S) (AGENCY USE ONLY)
( ) STATE/LOCAL AGENCY
( ) EEOC 033781683

Equal Employment Opportunity Commission and
(State or Local Agency)

NAME (Indicate Mr., Ms. or Mrs.)
Mr. Kondian R. Rajaram

HOME TELEPHONE NUMBER (Include area code) 732-0063 (Home)

STREET AND ZIP CODE COUNTY
Baltimore, Maryland

NAMED IS THE EMPLOYER, LABOR ORGANIZATION, EMPLOYMENT AGENCY, APPRENTICESHIP COMMITTEE, STATE OR LOCAL GOVERNMENT AGENCY WHO DISCRIMINATED AGAINST ME. (If more than one list below).

NAME
Sunpapers Chapel of BTU-12

TELEPHONE NUMBER (Include area code)

STREET ADDRESS
817 North Calvert Street

CITY, STATE AND ZIP CODE
Baltimore, Maryland 21202

NAME
International Typographical Union

STREET ADDRESS
P.O. Box 234

CITY, STATE AND ZIP CODE
Colorado Springs, Colorado 80901

TELEPHONE NUMBER (Include area code)

CAUSE OF DISCRIMINATION BASED ON MY (check appropriate boxes)
(x) RACE (x) COLOR
( ) SEX ( ) RELIGION
( ) NATIONAL ORIGIN
(x) OTHER (Specify) Indian (Asia)

DATE MOST RECENT OR CONTINUING DISCRIMINATION TOOK PLACE (Month, day, and year) Continuing

THE PARTICULARS ARE:

I. I was unfairly treated by Baltimore Typographical Union, Local No. 12. I have been a member since 1974. I have been a member in the Federal Union since 1970.

II. Jack Poist, then Chairman, and Gary Kidwell, Vice Chairman, of Sunpaper Chapel Local # 12 alleged that the reason why I was bypassed for job assignment was because of previous statements to the effect that I wanted day work only.

III. I belive I was discriminated against because of my race and National Origin, inasmuch

1. Jack Poist, then Chapel Chairman, illegally witheld

(sic) a TF (Temporary job until Further Notice) hire from me.

2. Mr. Lorenzo (W), with less priority than I, was given a TF hire for an absent night regular.
3. I had to give up my Constitutional right to file a charge of discrimination because of a discriminatory clause in the union bylaws.
4. I was denied the right to pay advance union dues by Jack Poist and Gary Kidwell.
5. I was not included in a meeting where a share-the-work agreement was adopted.
6. I have not been shared with proof that a share-the-work agreement was lawfully adopted.

I will advise the agencies if I change my address or telephone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.

NOTARY - (When necessary to meet State and Local Requirements)
I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.
SIGNATURE OF COMPLAINANT

SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE (Day, month, and year)

I declare under penalty of perjury that the foregoing is true and correct.

(Signature)
Kondian R. Rajaram
Aug. 30, 1978

UNITED STATES DISTRICT COURT

FOR THE

DISTRICT OF MARYLAND

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,

Plaintiff,

v.

SUNPAPERS CHAPEL OF BTU-12

and

INTERNATIONAL TYPOGRAPHICAL UNION,

Defendants.

CIVIL ACTION NO. JH-79-1826

COMPLAINT filed September 28, 1979

JURISDICTION AND VENUE

1. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. SS 451, 1343 and 1345. This is an action authorized and instituted pursuant to Section 706(f)(1) and (3) and (g) of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. S 2000e et seq. (1976 ed.), hereinafter referred to as "Title VII".

2. The unlawful employment practices alleged below were and are now being committed within the State of Maryland.

PARTIES

3. Plaintiff, Equal Employment Opportunity Commission, hereinafter re-

ferred to as "the Commission", is an agency of the United States of America charged with the administration, interpretation and enforcement of Title VII and is expressly authorized to bring this action by Section 706(f)(1), 42 U.S.C. § 2000e-5(f)(1).

4. Sunpapers Chapel of BTU-12, hereinafter referred to as "Local BTU-12" is a labor organization within the meaning of Section 701(d) and (e) of Title VII of the Civil Rights Act of 1964, 42 U.S.C. Section 2000e-(d) and (e). Local BTU-12 has continuously been and is now representing its members in matters concerning scale of wages, conditions and hours of employment with daily newspaper publishers of Baltimore City. Local BTU-12's membership continously (sic) has been and is now in excess of fifteen (15).

5. International Typographical

Union hereinafter referred to as "ITU", is a labor organization within the meaning of Section 701(d) and (e) of Title VII of the Civil Rights Act of 1964, 42 U.S.C. Section 2000e-(d) and (e). ITU has continuously been and is now international unincorporated parent association of Local BTU-12. ITU's membership has con-tinuously been and is now in excess of fifteen (15).

STATEMENT OF CLAIM

6. More than thirty (30) days prior to the institution of this action, a person claiming to be aggrieved filed a charge with the Commission alleging a violation of Title VII by Defendant. The Commission has been unable to secure from the Defendant a conciliation agreement acceptable to the Commission. All conditions precedent to the institution of this action have been fulfilled.

7. Since January 1970, and continuously up until the present time, Defendant ITU has intentionally engaged in unlawful employment policies and practices in Baltimore, Maryland, in violation of Section 704(a) of Title VII. These unlawful employment policies and practices include but are not limited to:

(a) maintaining a provision in its bylaws which prohibits, and has had the effect of prohibiting, persons prior to exhausting internal union remedies, from exercising their right to file charges of discrimination under Title VII, or otherwise exercising rights under Title VII, without being subject to expulsion from membership.

(b) maintaining a provision in its bylaws having the effect of prohibiting Kondian Rajaram from seeking redress of his grievances by filing a

charge of discrimination, and, as a result of which, causing Kondian Rajaram to follow internal union procedures and thereby incur out of pocket expenses.

8. Since January 1970, and continuously up until the present time, Defendant Local BTU-12 has intentionally engaged in unlawful employment policies and practices in Baltimore, Maryland, in violation of Section 704(a) of Title VII. These unlawful employment policies and practices include but are not limited to:

(a) maintaining a provision in its bylaws requiring its members to abide by the provision in the bylaws of ITU which prohibits and has had the effect of prohibiting persons, prior to exhausting internal union remedies, from exercising their right to file charges of discrimination under Title VII or

otherwise exercise rights under Title VII;

(b) aiding, assisting and cooperating with the ITU in applying and enforcing its unlawful bylaws referred to in Paragraph 7(a) above resulting in discrimination against Kondian Rajaram in violation of Section 704(a) of Title VII.

9. The effect of the policies, practices and provisions explained in Paragraphs 7 and 8 above have been to de- prive members of Defendant Unions of equal employment opportunities and otherwise adversely effect their status as members and prospective members.

PRAYER FOR RELIEF

WHEREFORE, the Commission respectfully prays that this Court:

A. Grant a permanent injunction enjoining Defendants, their agents, employees, successors, assigns, and all

persons in active concert or participation with them, from engaging in any employment practices or maintaining any bylaw policy or provision which prohibits and limits their members from exercising their rights under Title VII and/or threatens them with expulsion from membership in the event they seek redress of their grievances without first utilizing internal grievance procedures.

B. Order Defendant to make whole Kondian Rajaram, who was adversely affected by the unlawful employment practices described above, by providing appropriate monetary relief, with interest, in an amount to be proved at trial and other affirmative relief necessary to eradicate the effects of Defendant's unlawful employment practices.

C. Grant such further relief as the Court deems necessary and proper.

D. Award the Commission its costs in this action.

Respectfully submitted,

LEROY D. CLARK
General Counssel

WILLIAM L. ROBINSON
Associate General Counsel

(Signature)
MOLLIE W. NEAL
Regional Attorney

(Signature)
GERALD D. LETWIN
Supervisory Trial Attorney

(Signature)
JAG JIT SINGH
Trial Attorney

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
Baltimore District Office
711 W. 40th Street, Suite 210
Baltimore, Maryland 21211
(301) 962-3870

UNITED STATES DISTRICT COURT

FOR THE

DISTRICT OF MARYLAND

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,

Plaintiff,

v.

SUNPAPER CHAPEL OF BTU-12,

and

INTERNATIONAL TYPOGRAPHICAL UNION,

Defendants.

CIVIL ACTION NO.

JH-79-1826.

CONSENT DECREE

The Plaintiff, Equal Employment Opportunity Commission, an agency of the United States (hereinafter "Plaintiff"), commenced this Action, Civil Action No. JH-79-1826, in the United States District Court for the District of Maryland on September 28, 1979, alleging that Defendants International Typographical Union (hereinafter "ITU") and Sunpapers Chapel of BTU-12 (hereinafter "Sunpaper Chapel") violated Section 704(a) of Title VII of Civil Rights Act of 1964, as amended, 42 U.S.C. Section 2000e et seq. The allegation in the

Complaint was that Defendants violated Title VII by maintaining a provision in their by-laws subjecting any member to summary expulsion for appealing to a Civil Court or an agency for redress from an action by the Union before he had exhausted his rights of appeal under the laws of the International Union, and that this provision adversely affected Kondian Rajaram, a then union member. Defendants denied that they had engaged in any unlawful employment practices as alleged in the Complaint.

In order to avoid the time and expense of litigation, Plaintiff and Defendants agree to the following:

1. Within ninety (90) days after the entry of this Conssent Decree by the Court, Defendant ITU agrees to add the following language to the existing language of Article V, Section 43 of its by-laws:

> "The preceding paragraph does not apply to the initiation of any proceedings before a Court or an agency charging a violation of Title VII of the Civil Rights Act of 1964, as amended, which prohibits employment discrimination on the basis of race, color, religion, sex and national origin."

2. Defendants agree not to retaliate or discriminate against any member in violation of Section 704(a) of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. Section 2000-e(3)(a) (sic) because he has opposed any practice made an unlawful employment practice by Title VII, or because he has made a charge, testified, assisted or participated in any manner in an investigation, proceeding, or hearing under Title VII.

3. Defendant ITU agrees that it shall publish in the September, 1980 issue of its Journal (sent to all union members) the amendment to Article V, Section 43 described in paragraph 1.

4. The entry of this Consent Decree shall not constitute or operate as an acknowledgment or admission of any kind by the Defendants that they, their officers, agents, or employees have violated Title VII or have not been in compliance with Title VII.

5. This Consent Decree shall not be admissible in any proceeding as evidence of an admission by the Defendants of any violation of, or non-compliance with Title VII, as amended, or any other equal employment law or order.

6. This Consent Decree is effective as of the date approved by the United States District Court for the District of Maryland, in the matter of Equal Employment Opportunity Commission v. Sunpaper Chapel of BTU-12 and International Typographical Union, Civil Action No. JH-79-1826, and shall continue to be binding and effective upon

the parties, their agents, and their heirs, successors and assigns. The amendment to Article V, Section 43 described in paragraph 1 shall remain in effect hereinafter.

7. The Commission agrees that this Consent Decree is in full and complete settlement of all issues and claims of employment discrimination alleged in its Complaint in this case, which action was based on Charge No. 33-78-1682 and 033-78-1683.

8. Upon publication of the new provision in the ITU Journal and in Defendant ITU's by-laws, Defendant shall send complete copies of the appropriate Journal issue and of the revised by-laws to Plaintiff's counsel.

We have read the foregoing Consent Decree and we accept and agree to the provisions contained therein.

Respectfully submitted,

LEROY D. CLARK
General Counsel

(Signature)
JAMES N. FINNEY
Associate General Counsel

EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION
2401 E Street, N.W.
Washington, D.C. 20506

(Signature)
MOLLIE W. NEAL
Regional Attorney

(Signature)
GERALD D. LETWIN
Supervisory Trial Attorney

(Signature)
JAG JIT SINGH
Trial Attorney

EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION
Baltimore District Office
711 W. 40th Street, Suite 210
Baltimore, Maryland 21211
(301) 962-3870

(Signature)
RONALD ROSENBERG
Van Arkel, Kaiser,
Gressman, Rosenberg
and Driesen
1928 L Street, N.W.
Suite 701
Washington, D.C. 20036
(202) 466-8400

(Signature)
BERNARD W. RUBENSTEIN
Edelman & Rubenstein, P.A.

10 Light Street, Suite 2400
Baltimore, Maryland 21202
(301) 752-6160

ENTERED THIS ____ DAY OF JUNE, 1980.

(see order)
JOSEPH C. HOWARD
UNITED STATES DISTRICT
COURT JUDGE

Oct. 19, 1979

The Director
Equal Employment Opportunity Commission
711 West 40th St. Room 210
Baltimore, Md. 21211

Refer: Charges No. 033-78-1682
033-78-1683

Suit: EEOC v. Sunpapers Chapel of BTU-12 & International Typograph-ical Union

Court: U.S. District Court for the District of Maryland

Case No.: K-79-1826

Dear Director:

The case filed by your office does not appear to seek adequate relief. Therefore I intend to intervene and file a case of my own in addition to your

case No. K-79-1826. Please issue me a notice to (sic) right to sue so I can file my case separately. Thanks.

Sincerely,

(Signature)
KONDIAN R. RAJARAM
209 N. LUZERNE AVE.
BALTIMORE, MD. 21224

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

NOTICE OF RIGHT TO SUE

(Issued on Request)

TO: Mr. Kondian R. Rajaram
209 N. Luzerne Avenue
Baltimore, Maryland 21224

FROM:
EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
Baltimore District Office
711 W. 40th Street, Suite 210
Baltimore, Maryland 21211

CHARGE NUMBER 033-78-1682

EEOC REPRESENTATIVE

Mollie W. Neal, Regional Attorney

TELEPHONE NUMBER (301) 962-3870

(See Section 706(f)(1) and (f)(3) of the

Civil Rights Act of 1964 on reverse of this form.)

This is your NOTICE OF RIGHT TO SUE. It is issued at your request. If you intend to sue the respondent(s) named in your charge YOU MUST DO SO WITHIN NINETY (90) DAYS FROM THE RECEIPT OF THIS NOTICE; OTHERWISE YOUR RIGHT TO SUE IS LOST.

[x] More than 180 days have expired since the filing of this charge.

[ ] Less than 180 days have expired since the filing of this charge, but I have determined that the Commission will be unable to complete its administrative process within 180 days from the filing of the charge.

[x] With the issuance of this Notice of Right to Sue the Commission is terminating any further

processing of this charge.

[ ] It has been determined that the Commission will continue to process your charge.

If you cannot afford or have been unable to obtain a lawyer to represent you, you should be aware that the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e-5(f)(1) permits the U.S. District Court having jurisdiction in your case to appoint a lawyer to represent you. If you plan to request appointment of a lawyer to represent you, you must make this request of the U.S. District Court in the form and manner it requires. Your request to the U.S. District Court should be made well in advance of the end of the 90-day period mentioned above.

You may contact the EEOC representative named above if you have any questions about your legal rights including

advice on which U.S. District Court has jurisdiction to hear your case or if you need to inspect and copy information contained in the Commission's case file.

An information copy of the Notice of Right to Sue has been sent to the respondent(s) shown below.

On Behalf of the Commission

(Signature)
Dorothy E. Mead
District Director
(Typed Name and Title of EEOC Official)

10/25/79
(Date)

cc: Sunpapers Chapel of BTU-12 and
International Typographical Union
817 N. Calvert Street
Baltimore, Maryland 21202

Bernard W. Rubenstein, Esq.
Edelman, Levy & Rubenstein, P.A.
Suite 2400
10 Light Street
Baltimore, Maryland 21202

ATT: Cy. of Charge of Discrimination

EEOC FORM 161-B

IN THE U.S. DISTRICT COURT FOR THE DISTRICT OF MARYLAND

CIVIL ACTION #JH-79-1826

EQUAL EMPLOYMENT OPPORTUNITY COMM.
(sic)

VS.

SUNPAPER CHAPEL OF BTU - 12
and
INTERNATIONAL TYPOGRAPHICAL UNION
DEFENDANTS

Pursuant to notice the deposition of THEODORE J. KEES was taken on February 21, 1980 commencing at 10:00 a.m. at the office of the Equal Employment Opportunity Commission, 711 W. 40th Street, Suite 210, Baltimore, Maryland before Susan M. Highland, a Notary Public.

APPEARANCES; JAGJIT SINGH, ESQUIRE and
GERALD LETWIN, ESQUIRE
on behalf of the Plaintiff

BERNARD RUBENSTEIN, ESQUIRE
On behalf of the Defendants

Reported by: Susan M. Highland

(at page 2)

* * * *

THEODORE J. KEES,

a witness called for examination, having been first duly sworn to tell the truth, the whole truth and nothing but the truth, was examined and testified as follows:

EXAMINATION BY MR. SINGH

* * * *

(at page 9)

...

MR. RUBENSTEIN: So there is a letter to Mr. Raja Ram (sic) of April 5, 1978. Again I am going backwards. Here is one on February 14, 1978 ... They were exhibits previously. If you would make a copy of those and return them, we would appreciate it.

MR. LETWIN: Sure.

MR. RUBENSTEIN: I think much of that you have. I

(at page 10)

think Mr. Raja Ram (sic) turned over

part of them. Most of them are attached to his lawsuit.

MR. SINGH: Have you received a copy of it yet?

MR. RUBENSTEIN: We have received a copy. I am moving to consolidate it with yours. ...

* * * *

(at page 50)

...

(Signature)
Theodore J. Kees

(at page 51)

STATE OF MARYLAND)
COUNTY OF ANNE ARUNDEL)

I hereby certify that on the 21st day of February, 1980, before me, personally appeared THEODORE J. KEES, who was first duly sworn by me to tell the truth, the whole truth and nothing but the truth;

That the testimony of the said THEODORE J. KEES, was reduced to writing

by me and the aforegoing is a true record of the testimony of the said deponent.

I further certify that I am not attorney, relative nor employee of any party hereto, nor otherwise interested in the event of this case.

In Witness Whereof, I have hereunto set my hand and affixed my Notarial Seal, this 12th day of March 1980.

(Signature)
Susan M. Highland

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
BALTIMORE DISTRICT OFFICE
711 WEST 40TH STREET, ROOM 210
BALTIMORE, MARYLAND 21211

July 18, 1980

Kondian Rajaram
Post Office Box 13463
Baltimore, Maryland 21203

RE: EEOC v. Sun Paper Chapel of BTU 12, and International Typographical Union Civil Action No. JH 79-1826

Dear Mr. Rajaram:

This is in response to your letter of July 3, 1980, requesting that Jag Jit Singh, Trial Attorney, Baltimore District Office, provide a letter to you regarding certain settlement discussions between Mr. Singh and Sun Paper Chapel of BTU 12's attorney, Bernard Rubenstein, in the above captioned case.

As you are aware, Mr. Singh did contact you sometime in February of 1980 regarding the settlement of the Commission's lawsuit and your position with respect to the proposed settlement. You indicated during those discussions that you wished to pursue your individual claim against Sun Paper Chapel, and that you did not deem the Commission's settlement offer acceptable. On the basis of those discussions, the Commission issued to you a Notice of Right to Sue, upon your request, and subsequently

enterd into a consent decree with Sun Paper Chapel and the International Typographical Union resolving its lawsuit.

As you may be aware, compromise negotiations during the course of litigation are deemed to be privileged, based on considerations of public policy which encourages settlement of disputes by mutual concessions without the time and expense of protracted litigation. In view thereof, it would be inappropriate for the Commission to reveal matters relating to settlement discussions held between Counssel for Defendants and the EEOC in this case.

Moreover, we are of the view that evidence of the conduct and contents of statements made in compromise negotiations is not admissible in evidence under Rule 408 of the Federal Rules of Evidence.

For the foregoing reasons, we are

unable to comply with your request.

Sincerely,

(Signature)
Mollie W. Neal
Regional Attorney

T y p o g r a p h i c a l

J o u r n a l

S e p t e m b e r 1980

Back to School

* * * *

(at page 17)

* * * *

Change in Bylaws Adopted

The following change was adopted at the 122nd ITU Convention in Kansas City, Missouri:

Amend Article V, Section 43, By-laws, "Charges, Trials and Appeals," by adding matter printed in bold face, as follows:

Sec. 43. In no case shall a mem-

ber appeal to a civil court or any other agency for redress from an action by the union until he has exhausted his rights of appeal under the laws of the International Union. Any member who violates this section shall be liable to summary expulsion by the Executive Council.

The preceding paragraph does not apply to the initiation of any proceedings before a court or an agency charging a violation of Title VII of the Civil Rights Act of 1964, as amended, which prohibits employment discrimination on the basis of race, color, religion, sex and national origin.

AO 82
(Rev. 3/78)

ORIGINAL

RECEIPT FOR PAYMENT

UNITED STATES DISTRICT COURT

for the

DISTRICT OF MARYLAND 18811

at _____

RECEIVED FROM

Kondian R. Rajaram

J80-0012

* * * *

331 Civil Cases

* * * *

331#FLFE 60.00

CASE 800012

TOTL 60.00

CASH 60.00

1/04/80 10:25 01 2007

DEPUTY CLERK (Signature)
E R Schreiber

UNITED STATES DISTRICT COURT

FOR THE

DISTRICT OF MARYLAND

KONDIAN R. RAJARAM,

Plaintiff,

versus

INTERNATIONAL TYPOGRAPHICAL UNION

and

BALTIMORE TYPOGRAPHICAL UNION NO. 12

and

SUNPAPERS CHAPEL OF

BALTIMORE TYPOGRAPHICAL UNION NO. 12

and

JACK POIST

and

GARY KIDWELL,

Defendants.

CIVIL ACTION NUMBER _____

COMPLAINT (entered January 4, 1980)

JURISDICTION

1. The Jurisdiction of this Honorable Court is hereby invoked pursuant to:

(a) the United States Constitution, Article III, Sections 1 and 2,

(b) the Amendments to the United States Constitution, Article IX and Article XIII, Section 1,

(c) (1976 edition) 28 U.S.C. ss 100, 451, 452, 517, 535, 1331, 1339, 1343, 1345, 1391 (b), 1653, 1654, 1731, 1733, 1861, 1863,

1915, 1961, 2201, 2202, 2343,

(d) (1976 edition) 42 U.S.C. ss 2000e et. seq. (Titles II and VII of the Civil Rights Act of 1964, as amended in 1972),

(e) (1976 edition) 42 U.S.C. ss 1981, 1983, 1985, 2000e-(d) and (e), 2000e-2, 2000e-3, 2000e-4 and 2000e-5.

VENUE

2. The Venue of this Honorable Court's seat in Baltimore City in the District of Maryland is established pursuant to 28 U.S.C. ss 1391 (b) and 2343.

3. The unlawful employment practices and hiring practices and United States Constitutional violations were committed specifically within the City of Baltimore in the District of Maryland.

4. The practices and needs and pro-

visions, which prompted the unlawful employment practices and hiring practices and United States Constitutional violations, have continued to exist and are now existing specifically within the City of Baltimore and the District of Maryland (and generally throughout the United States). ...

* * * *

COMPLAINT

7. This Civil Action alleges employment discriminations committed by the last two Defendants (hiring persons, i.e., Mr. Poist and Mr. Kidwell) while functioning as officials representing the hiring authority vested in the offices of chapel chairman and chapel vice-chairman and in the first three Defendants. This Civil Action further alleges that employment discriminations were administered specifically in the forms of practising discriminations,

rejoicing in failing to voluntarily recognize discriminations, refusing to admit practising discriminations, refusing to gurantee not to repeat discriminations, and trying to mislead the Plaintiff and his fellow union-members and the Commission by sticking to a policy such as employment discrimination constitutes in only persisting in an unlawful act but not in abruptly reverting from an unlawful act upon detection and publicity. This Civil Action further alleges that all internal appeals for remedy and redress, prescribed by and required by the Defendants's labor union (five appeals stretched over a period of time about two years long), have been tried by the Plaintiff but in vain. This Civil Action further alleghes that a strong and sinister and secret power, which can be attributed to no one except the De-

fendants and their influence on the Commission officials, has been attempting through the Commission officials to jolt and influence and sway and shape the outcome of the Plaintiff's complaint and charges during the priod of time when Plaintiff's charges were being investigated by the Commission.

8. In addition, this Civil Action alleges violations of the Plaintiff's and innumerable union-members's rights (under the United States Constitution and United States Codes) committed by the Defendants. ...

PARTIES

9. ... In addition, the Plaintiff ... was lawfully admitted into these United States on June 26, 1970 at Buffalo, New York, under Alien Registration Number A30 321 100 as a permanent resident ...

FACTS

* * * *

25. Having completed a four-year apprenticeship training in Rochester, New York, and having become an ITU journeyman (Reg. No. 196700) in July, 1974, the Plaintiff moved to Baltimore City, Maryland, and started to work under ITU jurisdiction at the Sunpaper Company ...

* * * *

31. Even though the union laws of the ITU permit a union member to take a grievance to a court of law or a legal agency, yet the pre-requisites for doing so have been so hard and expensive and time-consuming ... that no known union member has succeeded within the last 121 years to complete the union-required appeal procedure and to take his (her) grievance to a court of law. No known union member within the last 121 years chose to skip one step of the union-

required appeal procedure and took a risky chance lest he (she) be expelled from the union and livelihood (Ex. 2). To put in other words, for the last 121 years the life of union members has been one of fear and exhaustion and involuntary servitude. The Plaintiff and the Commission are seeking an injunction to set the union members on a course of life that is American and fearless and free from involuntary servitude. ...

* * * *

33. Naked injustice and mistreatment have been rendered to the Plaintiff by the Commission (under the currently acting district director Dorothy E. Mead's administration). Though litigation had begun in this Court on September 28, 1979 on charges 033-78-1682 and 033-78-1683 (Civil Action No. K-79-1826 changed to JH-79-1826), the Plaintiff was denied access to the Commis-

sion's file by a trial attorney (Mr. Steve Roby) of the Commission on November 8, 1979. ... (Ex. 10) ...

* * * *

35. The Defendants, the respondents of the Commission's then pending charge numbers 033-78-1682 and 033-78-1683, ignored the Commission's invitation for settlement discussions ... which has led to two civil actions, i.e., the Plaintiff's current Civil Action and the Commission's K-79-1826 changed to JH-79-1826 filed on September 28, 1979. The Plaintiff had agreed to engage in said settlement discussions (Ex. 17) (Ex. 18) (Ex. 32). ...

* * * *

39. The law (that attempts to defy the U.S. Constitutional rights) of the Defendant, ITU, is describerd thus:- "Sec. 43. In no case shall a member appeal to a civil court or any other

agency for redress from an action by the union until he has exhausted his rights of appeal under the laws of the International Union. Any member who violates this section shall be liable to summary expulsion by the Executive Council." Bylaws, Article V, page 24, Book Of Laws Of The International Typographical Union (1979 edition) (Ex. 20). ...

* * * *

42. Until the Plaintiff visited the Commission on August 30, 1978 the Defendants did not question the Plaintiff's claim that there had existed an attempt by Mr. Poist and Mr. Kidwell to trick the Plaintiff into union dues arrears and thus try to topple the Plaintiff down to the bottom of substitute priority list (Ex. 40) (Ex. 22, page 23, paragraphs 8, 9, 10).

STATEMENT OF CLAIMS

* * * *

59. The Plaintiff's current Civil Action could have been easily incorporated into the Commission's Civil Action (K-79-1826 changed to JH-79-1826) were it not for the weaknesses of the Commission:- ...

* * * *

Respectfully so prepared and submitted by the Plaintiff,

Kondian R. Rajaram
209 North Luzerne Avenue
Baltimore, Md. 21224.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

KONDIAN R. RAJARAM Plaintiff

vs.

INTERNATIONAL TYPOGRAPHICAL UNION
and
BALTIMORE TYPOGRAPHICAL UNION No. 12
and
SUNPAPERS CHAPEL OF
BALTIMORE TYPOGRAPHICAL UNION No. 12
and

JACK POIST
and
GARY KIDWELL
and
A. S. ABELL PUBLISHING COMPANY
Defendants

CIVIL ACTION No. B-80-0012

SECOND AMENDED COMPLAINT

JURISDICTION AND VENUE

Plaintiff, Kondian R. Rajaram, by his attorneys, Edward Jack Makowski and Phillip Mizrach, for his complaint against the Defendants for violations of his rights brings these claims on the basis of Federal Statutes listed below and others that may be applicable in the interests of justice.

1. Jurisdiction of this Court is invoked pursuant to: 28 U.S.C. 1331; 1343,

29 U.S.C. 152(3), (8), (13); 158(a), (b)(2); 185; 401; 402; 411(a)(2), (4), (5); 411(b); 412; 415; 529.

42 U.S.C. 1981; 1994; 1985; 1986; 2000e; 2000e-2(a); 2000e-2(c); 2000e-3; 2000e-

5; 2000e-10.

Plaintiff avers that the amount in controversy exceeds Ten Thousand Dollars ($10,000.00) exclusive of interest and costs.

2. The unlawful practices alleged below were and are now being committed within the State of Maryland.

3. All conditions precedent to the institution of this action have been fulfilled as required.

PARTIES

4. The Plaintiff is a United States Citizen who came from India, the country of his birth and previous citizenship. He has been continuously a resident of Maryland since 1974. Plaintiff at all times since 1970 has been and is currently a dues paying member, in good standing, of the mentioned unions, and entitled to all rights and privileges pertaining thereto.

5. International Typographical Union, hereinafter referred to as "ITU", is a labor organization within the meaning of Title VII of the Civil Rights Act of 1964, 42 U.S.C. Section 2000e(d) and (e). ITU has continuously been and is now international unincorporated parent association of Baltimore Typographical Union No. 12, hereinafter referred to as "BTU-12", which includes Defendant, Sunpapers Chapel. ITU's membership has continuously been and is now in excess of fifteen (15).

6. BTU-12 is a labor organization within the meaning of the Civil Rights Act of 1964, 42 U.S.C. Section 2000e(d) and (e). It has been and is now representing members employed with publishers in Baltimore City. Its membership has been and is now in excess of fifteen (15).

7. Defendant, Sunpapers Chapel of

Baltimore Typographical Union No. 12 represents that group of ITU members in the employ of The A.S. Abell Publishing Company in Baltimore City. Its membership has been and is now in excess of fifteen (15).

8. Defendant, Jack Poisst, at the time of the alleged unlawful practices mentioned herein, was chairman of the aforementioned Sunpapers Chapel.

9. Defendant, Gary Kidwell, at the time of the alleged unlawful practices mentioned herein, was vice-chairman of the aforementioned Sunpapers Chapel.

10. Defendant, A.S. Abell Publishing Company, is the publisher of newspapers; was the employer of Kondian Rajaram, Jack Poist and Gary Kidwell; was party to agreements and engages in industry affecting commerce and has more than fifteen (15) employees.

STATEMENT OF CLAIMS

COUNT I

11. Since Plaintiff's employment in 1974, and continuously since then, Defendant, ITU, has intentionally engaged in unlawful employment policies and practices in Baltimore City, Maryland, in violation of Title VII of the Civil Rights Act of 1964. These unlawful employment policies and practices include but are not limited to:

(a) maintaining a provision in its bylaws which prohibits, and has had the effect of prohibiting, Plaintiff prior to exhausting internal union remedies, from exercising his right to file charges of discrimination under Title VII, or otherwise exercising rights under Title VII, without being subject to expulsion from membership.

(b) maintaining a provision in its bylaws having the effect of prohibiting Plaintiff, Kondian Rajaram, from seeking

redress of his grievances by filing a charge of discrimination or any other charge for an indefinite period of time, and, as a result of which, causing the Plaintiff to follow internal union procedures and thereby incur extreme out of pocket expenses.

12. Since Plaintiff's employment in 1974, and continuously since then, Defendant Local BTU-12 has intentionally engaged in unlawful employment policies and practices in Baltimore, Maryland, in violation of Title VII of the Civil Rights Act of 1964. These unlawful employment policies and practices include but are not limited to:

(a) maintaining a provision in its bylaws requiring its members to abide by the provision in the bylaws of ITU which prohibits and has had the effect of prohibiting the Plaintiff, prior to exhausting internal union remedies, from

exercising his right to file charges of discrimination or any other charge for an indefinite period of time under Title VII or otherwise exercise rights under Title VII.

(b) aiding, assisting and cooperating with the ITU in applying and enforcing its unlawful bylaws referred to in Paragraph 11(a) above resulting in discrimination against the Plaintiff in violation of Title VII.

13. Since Plaintiff's employment in 1974, and continuously since then, Defendant, Sunpapers Chapel, has intentionally engaged in unlawful employment policies and practices in Baltimore City, Maryland, in violation of Title VII of the Civil Rights Act of 1964. These unlawful employment policies and practices include but are not limited to:

(a) requiring its members to abide

by the provision in the bylaws of ITU which prohibits and has had the effect of prohibiting the Plaintiff, prior to exhausting internal union remedies, from exercising his right to file charges of discrimination under Title VII or otherwise exercise rights under Title VII.

(b) aiding, assisting and cooperating with the ITU in applying and enforcing its unlawful bylaws referred to in Paragraph 11(a) above resulting in discrimination against the Plaintiff in violation of Title VII.

14. Since Plaintiff's employment in 1974 and during the term thereof, Defendant, Jack Poist, as chairman of Sunpapers Chapel, has intentionally engaged in unlawful employment practices and policies in Baltimore, Maryland, in violation of Title VII of the Civil Rights Act of 1964. These unlawful employment policies and practices in-

clude but are not limited to:

(a) administering a provision in Union bylaws requiring members to abide by the provision in the bylaws of ITU which prohibits and has had the effect of prohibiting the Plaintiff prior to exhausting internal union remedies, from exercising his right to file charges of discrimination under Title VII or otherwise exercise rights under Title VII.

(b) aiding, assisting and cooperating with the ITU in applying and enforcing its unlawful bylaws referred to in Paragraph 11(a) above resulting in discrimination against the Plaintiff in violation of Title VII.

15. Since Plaintiff's employment in 1974 and during the term thereof, Defendant, Gary Kidwell, as vice-chairman of Sunpapers Chapel has intentionally engaged in unlawful employment practices and policies in Baltimore, Maryland, in

violation of Title VII of the Civil Rights Act of 1964. These unlawful employment policies and practices include but are not limited to:

(a) administering a provision in Union bylaws requiring members to abide by the provision in the bylaws of ITU which prohibits and has had the effect of prohibiting the Plaintiff prior to exhausting internal union remedies, from exercising his right to file charges of discrimination under Title VII or otherwise exercise rights under Title VII.

(b) aiding, assisting and cooperating with the ITU in applying and enforcing its unlawful bylaws referred to in Paragraph 11(a) above resulting in discrimination against the Plaintiff in violation of Title VII.

16. Since Plaintiff's employment in 1974, during the term thereof and continuously since then, Defendant, A.S.

Abell Publishing Company, has intentionnally engaged in unlawful employment policies and practices in Baltimore City, Maryland in violation of the Civil Rights Act of 1964. These unlawful policies and practices include but are not limited to aiding, assisting and cooperating with all other aforementioned defending parties in applying and enforcing their unlawful orders and regulations, resulting in discrimination against the Plaintiff in violation of Title VII.

17. The effect of the policies, practices and provisions explained in Paragraphs 11, 12, 13, 14, 15 and 16 above have been to deprive Plaintiff as a member of the Defendant Unions and as an employee of the Defendant Publishing Company of equal employment opportunities and otherwise adversely affect his status as a member and employee.

COUNT II

18. All of the aforementioned Defendants conspired for the purpose of impeding, hindering, obstructing or defeating the due course of justice with the intent to deny Plaintiff the equal protection of the laws in attempting to enforce his rights.

COUNT III

19. That each of the above named Defendants, individaully, failed to prevent or to aid in preventing or to try to prevent any wrongs mentioned in Section 1985 of Title 42 U.S.C. which they each, individually, had knowledge were about to occur and power to prevent.

COUNT IV

20. The above named Defendants, individually and collectively, denied the Plaintiff his right to the full and equal benefit of all laws and proceed-

ings for the security of persons and property as secured for all persons within the jurisdiction of the United States.

COUNT V

21. All of the Defendants engaged in the unlawful practice of limiting and depriving Plaintiff's employment opportunities because of his race, color and national origin. Their unlawful practices include but are not limited to an occasion in November of 1976 when a white employee of lower priority was given a job which should have been the Plaintiff's and to which he was entitled.

COUNT VI

22. That each and all of the Defendants discriminated against the Plaintiff because he opposed their unlawful employment practices and policies.

COUNT VII

23. That all of the Defendants failed to post and keep posted notice setting forth required relevant provisions of Civil Rights Act and information pertinent to the filing of a complaint.

COUNT VIII

24. Each and all of the Defendants knowingly and willingly participated in the damaging violation of the obligations of an existing contract affecting the Plaintiff by actions including making agreements outside of the contract without approval or notice.

COUNT IX

25. Each and all of the Defendant Unions and Officers violated their fiduciary duty to the Plaintiff arbitrarily and in bad faith and failed to represent his interest in formulating a new bargaining agreement in July of 1978.

COUNT X

26. Plaintiff was unreasonably punished for expressing his lawful objections, views, arguments and opinions on the unfair labor pracatices of the Defendants and for filing internal union grievancres.

COUNT XI

27. Plaintiff was illegally required by all of the Defendant Unions and Officers to expend approximately two (2) years in presenting his grievancaes through union procedures before resorting to administrative or Court actions which violated the standard set forth by the Bill of Rights of Members of Labor Organizations.

COUNT XII

28. Plaintiff was improperly disciplined without ever having been served with written specific charges, given a reasonable time to prepare a defense nor

afforded a hearing with relationship thereto. Defendants' disciplinary actions were manifested by their discriminating against the Plaintiff in failing to allow him job opportunities, failing to find him employment, and by denying him his senority (sic) rights. They assigned to another employee of lower priority a job that belonged to the Plaintiff.

COUNT XIII

29. The Defendant Unions and Officers never informed the Plaintiff concerning the provisions of the Labor-Management Reporting and Disclosure Act of 1959.

COUNT XIV

30. Plaintiff was unlawfully disciplined by Defendant Unions and Officers for exercising the rights to which he is entitled under the provisions of the Labor-Management Reporting and Disclo-

sure Act of 1959 in specific contravention of 29 U.S.C. Section 529.

COUNT XV

31. The Plaintiff was not compensated for the years of service rendered.

COUNT XVI

32. Arbitrarily and unlawfully, Defendant, Jack Poist, classified the Sunpapers Chapel substitute-employees into groups to further the practice of employment discrimination.

33. Plaintiff avers that he has fulfilled all reasonable obligations as to his responsibilities towards the company, his unions, their agents, and other members and employees therein and has committed no acts that would interfere with the performance of any legal or contractual obligations that would entitle any party to commit any of the wrongs mentioned herein.

34. The Plaintiff avers no interested employer, association, or any other party is directly or indirectly financing, encouraging, or participating in this action.

35. The results of each and all of the Defendants' actions, policies, and practices have been to deprive Plaintiff of his rights. The Defendants have adversely effected the Plaintiff's status as a member of these unions and as an employee of the company. The Plaintiff has been caused to suffer severe mental anguish and emotional distress. The Plaintiff has also suffered great financial strain. The Plaintiff has further suffered irreparable loss of many years of his life. The Plaintiff has suffered other direct and consequential damages.

WHEREFORE, Plaintiff demands judgment against International Typo-

graphical Union, or Baltimore Typographical Union No. 12, or Sunpapers Chapel of Baltimore Typographical Union No. 12 or Jack Poist, or Gary Kidwell, or A.S. Abell Publishing Company or against all or any combination thereof in the sum of Twenty Five Million Dollars ($25,000,000.00) and he demands that they pay for his attorneys' fees and costs and that he be granted such other and further relief as the nature of this cause may require.

(Signature)
Edward Jack Makowski

(Signature)
Kondian R. Rajaram, Plaintiff

(Signature)
Phillip Mizrach
1746 Eastern Avenue
Baltimore, Maryland 21231
563-0990
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I HEREABY CERTIFY that on this 18th day of January, 1983, a copy of the aforementioned Second Amended Complaint was mailed to Bernard W. Rubenstein, Esq., Edelman and Rubenstein, P.A., 10

Light Street, Suite 2400, Baltimore, Maryland 21202, Counsel for Defendants.

(Signature)
Edward Jack Makowski

(Signature)
Phillip Mizrach
Attorneys for Plaintiff

MORNING EVRENING SUNDAY

THE SUN

THE A.S. ABELL COMPANY, PUBLISHER

BALTIMORE, MD. 21203

December 2, 1976

Mr. Theodore J. Kees, President
Baltimore Typographical Union #12
817 N. Calvert Street
Baltimore, Maryland 21202

Dear Mr. Kees:

Effective Sunday, December 5, The A. S. Abell Company will cover any dormant situation up to a thirty day period

only. No new situations will be created until further notice and substitutes presently covering dormant situations shall be returned to the sub board.

Any situation holder absent for a reason other than illness shall lose all contractual benefits after thirty days of absence in any calendar year.

Employees absent because of incapacitating illness or serving the Local or International Typographical Unions will be returned to their situation upon return to work. The Company will require proof of illness to retain benefits.

Therefore, in accordance with Section 41 of our agreement, the following situations shall be considered dormant in that to date, they have exceeded the thirty day period:

T. Kees
W. Crane
L. Regulski
E. Jakowski

R. Perrine

The substitutes presently covering the above dormant situations shall be returned to the sub board.

Sincerely,

(Signature)
John J. Banach

cc: Mr. Hugh Meadowcroft
Mr. Jack Poist

VOLUME I

BALTIMORE TYPOGRAPHIC (sic) UNION LOCAL #12

VS.

A. S. ABELL COMPANY

BEFORE THE AMERICAN ARBITRATION ASSOCIATION

CASE NO. 14 30 1492 76 M/J

March 24, 1977

Lord Baltimore Hotel

Baltimore, Maryland

before:

PROFESSOR MYRON L. JOSEPH, ARBITRATOR

APPEARANCES:

Bernard W. Rubinstein, (sic) Esquire
on behalf of
Baltimore Typographic (sic) Union
Local #12
James P. Garland, Esquire
and Gilbert A. Abramson, Esquire
on behalf of A. S. Abell Company

ALSO PRESENT:

Theodore Kees
Jack Poist
John J. Banach
Paul C. Bowen
Hugh B. Meadowcroft
Richard L. Friedman

Reported by: M. A. Beaulieu, RPR, CM
GORE BROTHERS REPORTING COMPANY
221 East Redwood Street
Baltimore, Maryland 21202
837-3027

* * * *

(Page 5, line 17 through page 8, line 9)

MR. RUBINSTEIN: (sic) I would like --

I think there is another preliminary matter which should be on the record and that is that the Agreement which has been introduced as Joint Exhibit 1 is from January 1, 1974 to December 31, 1976. There is no new Agreement. The parties are still negotiating and I would like a statement from the Company as to what their position is with respect to arbitrability or not concerning this matter. I don't want something to hit me in the face later.

MR. GARLAND: Our position is that we agreed with Mr. Kees at the time he presented his letter of December 3rd, 1976, that we would arbitrate this matter and we are following through on that agreement with Mr. Kees.

ARBITRATOR: I take it then the parties agree that the grievance or the dispute, however you characterize it, has been processed properly by the

parties under this prior agreement; that it has been properly appealed to arbitration and the parties agree to arbitrate the issue and be bound by the Arbitrator's determination.

MR. GARLAND: Yes, sir.

MR. RUBINSTEIN: (sic) Okay. Fine.

ARBITRATOR: Very good. What I am pawing through this thing for is to see whether or not it accidentally calls for - -

MR. RUBINSTEIN: (sic) It does; a Board.

ARBITRATOR: A Board, in which case I want to know whether or not you are waiving it? ...

MR. RUBINSTEIN: (sic) ... The procedure of the parties has been in the past that they do not waive the Board, that the impartial Chairman submits to the Board tentative opinion of award with stipulation that it would become

final unless he hears to the contrary by a certain period of time. Any member of the Board, any one of the four other members has a right to call for a conference prior to that time.

MR. GARLAND: That has been the practice.

ARBITRATOR: That is certainly acceptable to me. Let me make sure I understand it. You are not saying that it requires a passing back and forth of the documents in order to obtain signature. What you are saying is that I will submit my draft award to the members of the Board and that in the absence of a request for an executive session within let us say thirty days, the award becomes final.

MR. RUBINSTEIN: (sic) I think you could even shorten that period.

ARBITRATOR: Tell me what period you would like?

MR. GARLAND: I would propose ten days really.

MR. RUBINSTEIN: (sic) Yes.

ARBITRATOR: Would you correct my statement to read ten days? Now, since this is handled through the Triple A, I will necessarily transmit the documents to the members of the Board through the Triple A.

American Arbitration Association

Case No. 14 30 1492

In the matter of arbitration

between

The A.S. Abell Company

and

Baltimore Typographical Union No. 12

Appearances for the Company:

James P. Garland, Esq.

Gilbert A. Abramson, Esq.

Semmes, Bowen & Semmes

Appearances for the Union:

Bernard W. Rubenstein, Esq.

Edelman, Levy and Rubenstein

Pittsburgh, Pennsylvania

September 7, 1977

* * * *

(at last two pages, i.e., pages 18-19 of the Decision and Award)

* * * *

"Decision and Award:

The Company violates its obligations under the Agreement when it refuses to hire a substitute to replace a regular situation holder who is absent for any period of time.

The Company violated its obligations under the Agreement when it refused to employ substitutes in situations where the regular situation holders had been absent for over thirty days.

The Company is instructed to make whole those journeymen who were not

permitted to work as a result of the Company's letter of December 2, 1976, by paying them the earnings they would have received if they had been employed as substitutes for the regular situation holders who had been absent for more than thirty days. Any unemployment compensation or earnings from other employment shall be subtracted from the Company's liability.

The Company is instructed to employ competent substitutes in accordance with the procedures set forth in the Agreement, and in the applicable Union Laws, as replacements for regular situation holders who are absent for any period of time.

(Signature)
Myron L. Joseph
Chairman, Board of Arbitration

NO SIGNATURE
John Banach
Company Board Member

NO SIGNATURE
Paul C. Bowen

Company Board Member

(Signature) 9/14/77
Theodore Kees
Union Board Member

(Signature) 9-20-77
Jack Poist
Union Board Member"

MORNING EVENING SUNDAY

THE SUN

THE A.S.ABELL COMPANY, PUBLISHER
BALTIMORE, MD., 21203

VICE PRESIDENT/INDUSTRIAL RELATIONS

September 29, 1977

Mr. Theodore J. Kees, President
Baltimore Typographical Union #12
I.T.U.
817 North Calvert Street,
Baltimore, Maryland 21202

Subject:
American Arbitration Association
Case No. 14-30-1492-76 M/J
Coverage after 30 days

Dear Mr. Kees:

In accordance with arbitrator Myron L. Joseph's Award and Opinion dated September 7, 1977 regarding the

above-captioned matter, please be advised of the following:

As a result of the Company's letter dated December 2, 1976, the following extra employees were not permitted to work during the period from December 5, 1976 thru December 31, 1976:

Anderson	December 9
Cooper	December 6, 7, 8, 21 and 21 (sic)
Day	December 8
Ford	December 20, 21, 27 and 28
Golden	December 9 and 30
Griffin	December 22, 23 and 27
Gertz	December 20
Lorenzo	December 6, 8, 21, 22, 23 and 27
Leasure	December 30
McGill	December 29
Pelton	December 15, 17 and 22
Rajaram	December 13, 17, 20 and 21
Ritter	December 6 and 20
Robinson	December 14, 15, 21 and 27
Sanford	December 8 and 22
Varner	December 6 and 7
Ward	December 28

In accordance with Mr. Joseph's Award please furnish to the Company information concerning any unemployment compensation or earnings from other employment that the above-named indiv-

iduals may have received during the period indicated. Upon verification of this information, the Company will make the necessary back-pay computations and issue checks to appropriate individuals.

In accordance with Mr. Arthur R. Mehr's letter dated September 28, 1977, the Company Board Members have refussed to sign the Award and Opinion of Mr. Joseph but, instead, have submitted a written Dissenting Opinion. Despite our full and complete compliance with the monetary aspects of the Arbitrator's Award and Opinion, the Company is reserving the right to challenge the Arbitrator's decision in an appropriate forum.

Sincerely,

(Signature)
John J. Banach

cc: Mr. Hugh B. Meadowcroft
Mr. Jack Poist

(Plaintiff's Trial Exhibit No. 370)

BALTIMORE TYPOGRAPHICAL UNION No. 12
10-9-77 Page 1
MINUTES OF STATED MEETING
Sunday, October 9, 1977
817 N. Calvert Street

* * * *

The President's Report

* * * *

BALTIMORE TYPOGRAPHICAL UNION No. 12
10-9-77 Page 2
MINUTES OF STATED MEETING
Sunday, October 9, 1977
817 N. Calvert Street

* * * *

President Kees reported on the awards of arbitrator Myron Joseph regarding the failure of the Sunpapers to cover dark situations.

The President then read a letter from Mr. John Banach of the Sunpapers in which he (Banach) listed those employees thatthe (sic) company would compensate under this award.

The Sunpapers have taken the position that they must only pay for lost

wages from December 5, 1976 thru December 31, 1976.

Mr. Kees reported that the Union will fight this position taken by the Sunpapers.

The President stated that the Unions' record shows the Sunpapers owe $50,000 in lost wages and benefits.

In his letter of September 29, Mr. Banach is offering a total of $2,455.30.

President Kees read a letter sent by his office to Mr. Banach stating the Union's position on this matter.

At this point, President Kees showed the members present the amount of work involved to reach the total liability of the Sunpapers in regards to this award. He stated that Chairman Poist had worked 45 hours on his own time to compute all the lost earnings and benefits. The President recommended that Chairman Poist be paid for this time. Lou

Daubert--seconded--Snellinger--amend the recommendation to one weeks pay. No second

The original recommendation carried, Chairman Poist would be paid from the Arbitration Fund.

* * * *

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MARYLAND

BALTIMORE TYPOGTRAPHICAL UNION NO. 12,
Plaintiff,

vs.

THE A.S. ABELL COMPANY,
Defendant

Civil Action No. N-78-455

COMPLAINT

Baltimore Typographical Union No. 12, by Bernard W. Rubenstein and Edelman, Levy and Rubenstein, P.A., its attorneys, does hereby allege as

follows:

1. Jurisdiction of this action is conferred upon this Court pursuant to the provisions of Section 301 of the Labor-Management Relations Act of 1947, 29 U.S.C. Section 185 et seq.

2. Plaintiff, Baltimore Typograph-ical Union, Local No. 12 is a labor organization representing employees for the purposes of collective bargaining in an industry affecting commerce within the meaning of the Labor-Management Relations Act of 1947. It maintains its principal office at 817 North Calvert Street, Baltimore, Maryland 21202. It represents various employees of Defend-ant, The A. S. Abell Company.

3. Defendant, the A. S. Abell Company, is engaged in publishing newspapers in the State of Maryland. Defendant is an employer engaged in an in-dustry affecting commerce within the

meaning of the Labor-Management Relations Act of 1947.

4. Plaintiff and Defendant entered into a multiemployer collective bargaining agreement effective January 1, 1974 which continued in effect until December 31, 1976 (attached hereto and incorporated herein by reference as Exhibit 1).

(1) Filed March 17, 1978

5. Sections 33 through 39 of the collective bargaining agreement sets (sic) forth the procedure to be followed in the event that the Plaintiff wishes to file a grievancve and pursue said grievance to arbitration. Article 37 of the Agreement specifically concerns the arbitration procedure.

6. On or about December 2, 1976 by letter attached hereto as Exhibit 2, the A.S. Abell Company notified the Plaintiff Union that it was modifying the

practices of covering absences of regular journeymen by substitutes after thirty (30) days.

7. The Plaintiff Union grieved under the Agreement and filed for arbitration in a timely manner. After a full and fair hearing, Arbitrator Myron L. Joseph mutually selected by the parties decided:

> "The Company violates its obligations under the Agreement when it refused (sic) to hire a substitute to replace a regular situation holder who is absent for any period of time.
>
> The Company violated its ogliga-tions under the Agreement when it refused to employ substitutes in situations where the regular situation holders had been absent for over thirty days."

A copy of said decision and award is attached hereto and incorporated herein by reference as Exhibit 3.

8. The Arbitrator ordered the Company

> "...to make whole those journeymen who were not permitted to

> work as a result of the Company's letter of December 2, 1976, by paying them the earnings they would have received if they had been employed as substitutes for the regular situation holders who had been absent for more than thirty days. Any unemployment compensation or earnings from other employment shall be subtracted from the Company's liability.
>
> The Company is instructed to employ competent substitutes in accordance with the procedures set forth in the Agreement ..."

9. Despite Arbitrator sJoseph's award, without justification and in contravention of the provisions of the collective bargaining agreement, the Company has failed and refused to comply with the award for the period subsequent to December 31, 1976 and at all times thereafter, as evidenced by a letter from John J. Banach, attached hereto and incorporated herein by reference as Exhibit 4.

WHEREFORE, Plaintiff prays:

1. That the September 7, 1977 deci-

sion of Arbitrator Joseph be enforced;

2. That the Defendant be ordered to reimburse Plaintiff for its attotrney's fees and costs;

3. That Plaintiff be afforded such other and further relief as may be deemed appropriate.

(Signature)
Bernard W. Rubenstein
Edelman, Levy and Rubenstein, P.A.
Suite 2400 - 10 Light Street
Baltimore, Maryland 21202
752-6160
Attorneys for Local 12

In accordance with Section 13 paragraph (d) of the collective bargainning agreement dated July 6, 1978, I, KONDIAN R. RAJARAM, a prioirity substitute with priority dating prior to December 31, 1976 in the Sunpapers/News American Composing Room, hereby advise the Publisher that on July 18, 1978, I wish to voluntarily resign my employment with the Sunpapers/News American and

accept the following lump sum payment:

Gross pay		$1,500.00
Less:		
20% Federal Tax ..	$300.00	
7 1/2% State Tax .	112.50	
6.05% F.I.C.A. ...	90.75	
2.25% Union Dues..	33.75	537.00
Net Payment		$ 963.00

I understand that the Publisher will have my net pay ready within ten (10) calendar days of the date of this resignation and will forward the above 2 1/4% Union dues on my behalf to Baltimore Typographical Union No. 12.

(Signature) (Kondian R. Rajaram)
Signature of Employee

MAIL CHECK

I.D. Card ?

Mailing Address:
P.O. Box - 13463
Baltimore, Md.
21203

373-46-0517
Employee's Social Security Number

July 18, 1978
Date of Application for Incentive Payment

Accepted for the Publisher:

By (Signature) (John J. Banach)

Date: 7-18-78

CC: Baltimore Typographical Union No. 12

MORNING EVRENING SUNDAY
THE SUN
THE A.S. ABELL COMPANY, PUBLISHER
BALTIMORE, MD. 21203

August 22, 1978

Mr. Kondian R. Rajaram
P. O. Box 13463
Baltimore, Maryland 21203
Dear Mr. Rajaram:

In accordance with arbitrator Myron L. Joseph's Award and Opinion dated September 7, 1977 regarding coverage of dormant situations in the Composing Room after 30 days, please be advised of the following.

The Sunpapers and Baltimore Typographical Union #12 have reviewed all of the records for the period from December 5, 1976 through December 31, 1976 and have ascertained that you are entitled to back pay including vacation credits

earned in the amount of $246.07 in full compliance with the arbitrator's award.

The appropriate pension credit for the shifts paid will be forwarded to the I.T.U. Negotiated Pension Plan Fund.

In accordance with the wage scales as provided for in the new agreement signed on July 6, 1978, you will also find enclosed a check covering the retroactive pay for those shifts which you worked.

Sincerely,

(Signature)
Paul C. Bowen
Manager, Labor Relations

/n

cc: Baltimore Typographical Union #12

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

BALTIMORE TYPOGRAPHICAL UNION NO. 12
Plaintiff

vs.

THE A.S. ABELL COMPANY, Defendant

CIVIL ACTION NO. N-78-455

DISMISSAL

Mr. Clerk,

Please dismiss the above entitled case.

(Signature)
Bernard W. Rubenstein
Edelman, Levy and Rubenstein, P.A.
Suite 2400 - 10 Light Street
Baltimore, Maryland 21202
752-6160

Attorneys for Plaintiff

I HEREBY CERTIFY that on this 11th day of September, 1978, a copy of the within Dismissal was mailed to Gil A. Abramson, Esquire, Semmes, Bowen & Semmes, 10 Light Street, Baltimore, Maryland, 21202, Attorney for Defendant.

(Signature)
Bernard W. Rubenstein

(5) Filed 11 September 1978

NATIONAL LABOR RELATIONS BOARD
REGION 5
Candler Building - 4th Floor
109 Market Place
Baltimore, MD 21202

(301) 962-2822

March 23, 1984

Mr. Kondian R. Rajaram
c/o Mr. Edward Makowski
1746 Eastern Avenue
Baltimore, MD 21231

Re: Freedom of Information Act Request

Dear Mr. Rajaram:

This is in reply to your request, under the Freedom of Information Act, to examine the files in A.S. Abell Company, Cases 5-CA-8741, 9020 and 9433. Please be advised that the file in Case 5-CA-8741 was closed in 1977, was sent to the Federal Records Center in 1980 and was recently destroyed by the Center. The files in Cases 5-CA-9020 and 9433 were closed in 1978 and were sent to the Federal Records Center in 1981. Those two files have been requested from the Center, a process which takes approximately four weeks. Upon receipt of the files, this office will respond to your request.

Very truly yours,

(Signature)
Leonard R. Miller
Acting Regional Director

IN THE CIRCUIT COURT FOR BALTIMORE CITY

Case No. 84135042/L20441

KONDIAN R. RAJARAM
P.O. Box 13463
Baltimore, Maryland 21203,
on behalf of himself and all
others similarly situated,

Plaintiffs

vs

A. S. ABELL PUBLISHING COMPANY
501 North Calvert Street,
Baltimore, Maryland 21202
Defendant

May 14 1984 filed & entered

NARR

KONDIAN R. RAJARAM is representative of the class of approximately 24 "substitute" employees as more fully designated hereinafter. Said employees presently reside at various, as yet not

fully determined, locations throughout the country. Each such employee was represented by the hereinafter mentioned Unions and are, or may be, entitled to relief provided by an Arbitration Award from the A.S.Abell Publishing Company pertaining to such substitute employees. The claims of Mr. Rajaram are typical of the claims of each other member of the class and he will fairly and adequately protect the interests of the class.

Plaintiffs, Kondian R. Rajaram and all others similarly situated, who were members of the International Typographical Union, and members of Baltimore Typographical Union # 12, and members of Sunpapers Chapel of Baltimore Typographical Union, and employed at the A. S. Abell Publishing Company, (hereinafter referred to as "Company"), as "substitute" employees on or after December 31, 1976, now come to this Court by and

through attorney, Edward J. Makowski, pursuant to Maryland Rule 209, and say:

1. In September of 1977, a final Arbitration Decision and Award (a copy of which is attached hereto and incorporated herein by reference) was made in writing in favor of Plaintiffs against the A.S. Abell Publishing Company.

2. No subsequent application has been filed to vacate, modify or correct said Arbitration Award.

3. Plaintiffs were informed in general terms, via a Union publication about the mentioned Arbitration Award and the portions of the decision in their favor contained therein.

4. A nominal partial payment pur-suant to the Award granted was made by the Company to Plaintiff Rajaram and others for losses accruing through December 31, 1976.

5. No further payments due and owing

have been made, and no further information was provided to Plaintiffs sua sponte by either the Unions, their officers, the Company or its agents concerning said Award or the enforcement thereof.

6. Plaintiff Rajaram has persistently and diligently endeavored to obtain information from both the Company and the Unions concerning the matters of Contract liabaility and enforcement with regard to his interest in the Arbitrator's Award as well as other pertinent matters. These efforts were made prior to and pursuant to a pending individual action in Federal District Court, and all Defendants named therein, (including Defendant Company named in this action), steadfastly concealed all information and refused to provide requested Documents or to answer Interrogatories and Requests for Admissions of Facts until

the Unions and their officers were compelled to do so by the Federal District Court in November of 1983.

7. Documents and information subsequently provided by the Unions in November of 1983, and thereafter, vaguely indicate that said Arbitration Award, And-/or other Arbitration dicisions may have been discussed during negotiations on the 1977 collective bargaining agreement, which was signed in 1978. Further information revealed that the local Union had taken the matter of full compliance with the Arbitrator's Decision to the N.L.R.B., and that the N.L.R.B. had refused to issue a complaint concerning enforcement of the Award.

8. Insofar as Plaintiff Rajaram has been able to ascertain, information has been and is presently still being concealed from the other members of this class. They have been intentionally

kept in ignorance by the Unions, their officers or agents, the Company or its officers or agents, of the actions or lack thereof concerning rights to benefits afforded by the aforesaid Award. No publication or other method of dissemination of factual information has been provided to reveal the progress of enforcement efforts. Prior to the Union's being compelled to provide discovery in November of 1983, none of the parties involved revealed or indicated anything to Plaintiffs concerning the futile attempt to obtain enforcement through the N.L.R.B. The Company has continuously and adamantly refused to disclose any and all requested information concerning this issue.

9. With reckless disregard of Plaintiffs' rights and in spite of requests by Plaintiff Rajaram, Defendant continues to refuse to honor the express con-

tract to be bound by the Arbitrator's Decision.

WHEREFORE, Plaintiffs request that Judgment be entered CONFIRMING the Arbitration Award pursuant to Maryland Rule E2 and the Maryland Uniform Arbitration Act, Courts and Judicial Proceedings S 3-201 et seq. Additionally, Plaintiffs pray that the Court AWARD costs of petition, subsequent proceedings and disbursements. Plaintiffs further request the Court appoint an auditor to assist in the determination of the amounts due each plaintiff pursuant to said Award, including interest, costs, attorney's fees and other expenses and GRANT such other and further relief as the nature of this cause may require.

(Signature)
KONDIAN R. RAJARAM

(Signature)
EDWARD J. MAKOWSKI
1746 Eastern Avenue
Baltimore, Maryland 21231
(301) 563-0990
ATTORNEY FOR PLAINTIFF

IN THE CIRCUIT COURT FOR BALTIMORE CITY

Case No. 84 135 043/L20442

KONDIAN R. RAJARAM
P.O. Box 13463
Baltimore, Maryland 21203,
on behalf of himself and all
others similarly situated,
Plaintiffs

vs

INTERNATIONAL TYPOGRAPHICAL UNION
301 South Union Boulevard
Colorado Springs, Colorado 80910

and

BALTIMORE TYPOGRAPHICAL UNION No. 12
817 North Calvert Street
Baltimore, Maryland 21202

and

SUNPAPERS CHAPEL of BALTIMORE
TYPOGRAPHICAL UNION No. 12
501 North Calvert Street
Baltimore, Maryland 21202

and

A. S. ABELL PUBLISHING COMPANY
501 North Calvert Street
Baltimore, Maryland 21202

and

THEODORE J. KEES
817 North Calvert Street

Baltimore, Maryland 21202

and

JACK POIST
501 North Calvert Street
Baltimore, Maryland 21202

and

JOHN BANACH
501 North Calvert Street
Baltimore, Maryland 21202

and

PAUL C. BOWEN
501 North Calvert Street
Baltimore, Maryland 21202

and

RICHARD BROWN
301 South Union Boulevard
Colorado Springs, Colorado 80910

Defendants

DECLARATION

KONDIAN R. RAJATRAM is representative of the class of approximately 24 "substitute" employees as more fully designated hereinafter. Said employees presently reside at various, as yet not fully ascertained, locations throughout the country. Each such employee was

represented by the defending Unions and officers and are, or may be, entitled to relief provided by an Arbitration Award from the A.S.Abell Publishing Company pertaining to such substitutes. The claims of Mr. Rajaram are typical of the claims of each other member of the class and he will fairly and adequately protect the interests of the class.

Plaintiffs, Kondian R. Rajaram and all others similarly situated, who were members of the International Typographical Union, (hereinafter refered to as "ITU"), and members of Baltimore Typographical Union # 12, (hereinafter refered to as "BTU 12"), and members of Sunpapers Chapel of Baltimore Typographical Union, (hereinafter refered to as "Sun Chapel"), and employed at the A.S. Abell Publishing Company, (hereinafter refered to as "Company"), as "substitute" employees on or after December 31,

1976, now come to this Court by and through attorney, Edward J. Makowski, pursuant to Maryland Rule 209, and say:

COUNT I

Plaintiffs sue Defendants ITU, BTU 12, Sun Chapel, Theodore Kees, Jack Poist and Richard Brown and say:

1. At the time of accrual of the subject grievances and complaints which resulted in the forementioned favorable Arbitration Award, Plaintiffs were members in good standing of the Defendant Unions and entitled to all rights and benefits of contracts accruing thereby.

2. Defendants ITU, BTU 12, Sunpapers Chapel and the named Defendant Union officers and representatives were aware of said Arbitration Award, its contents and the resultant rights and benefits provided thereby to Plaintiffs.

3. Plaintiffs were informed in a general manner, via a Union publication,

about the mentioned Arbitration Award and portions of the decision in their favor contained therin. (sic)

4. A nominal partial payment pursuant to the Award granted was made by the Compoany to Plaintiff Rajaram and others for losses accruing through December 31, 1976.

5. No further payments due and owing have been made and no further information was provided to Plaintiffs sua sponte by either the Unions, their officers, the Company or its agents concerning said Award or the enforcement thereof.

6. Plaintiff Rajaram has persistently and diligently endeavored to obtain information from both the Company and the Unions concerning the matters of Contract liability and enforcement with regard to his interest in the Arbitrator's Award as well as other pertinent

matters. These efforts were made prior to and pursuant to a pending individual action in Federal District Court, and all Defendants named therein, (including Defendant Unions and Company named in this action), steadfastly concealed all information and refused to provide requested Documents or to answer Interrogatories and Requests for Admissions of Facts until the Unions and their officers were compelled to do so by the Federal District Court in November of 1983.

7. Documents and information subsequently provided by the Unions in November of 1983, and thereafter, vaguely indicate that said Arbitration Award, and/or other Arbitration decisions may have been discussed during negotiations on the 1977 collective bargaining agreement, which was signed in 1978. Further information revealed that the local

Union had taken the matter of full compliance with the Arbitrator's Decision to the N.L.R.B. and that the N.L.R.B. had refused to issue a complaint concerning enforcement of the Award.

8. Insofar as Plaintiff Rajaram has been able to ascertain since November of 1983, Defendant Unions, officers and/or agents have failed to protect in good faith, the interests and absolute rights of Plaintiffs with regard to the considerable amounts of monies due and owing pursuant to said Award, through any further action. The Company has failed to fully comply with the provisions of the Decision as agreed. Insofar as Plaintiff Rajaram has been able to ascertain, information has been and is presently still being concealed from the other members of this class. They have been intentionally kept in ignorance by the Unions, their offi-

cers and agents, and the Company, its officers and agents, of the actions or lack thereof concerning rights to benefits afforded by the aforesaid Award. No publication or other method of dissemination of factual information has been provided to reveal the progress of enforcement efforts. As example, prior to the Unions' being compelled in November of 1983, as mentioned, none of the Defendants indicated anything to Plaintiffs concerning the futile attempt to obtain enforcement through the N.L.R.B. The Company has adamantly refused to disclose any and all requested information concerning this issue.

9. Full good faith representation and protection of Plaintiffs' rights and interests by the Unions in regard to this matter is required by contract. The Unions have arbitrarily failed to honor their contractual obligations and

have failed to respond to an express request to enforce this Award.

10. The facts and representations hereafter stated and those contained in the copy of the attached Arbitrator's Decision and Award are incorporated herein by reference.

WHEREFORE, Plaintiffs respectfully request that Judgment for damages be entered in favor of Plaintiffs against: (a) Defendant ITU, or Defendant BTU 12, or Defendant Sunpapers Chapel, or Defendant Theodore Kees, or Defendant Jack Poist, or Defendant Richard Brown, or (b) against all mentioned Unions, officers and agents, or (c) apportion contributory amounts as the Court deems appropriate, in the total amount of Two Million, Eight Hundred and Fifty Thousand Dollars ($2,850,000.00). Additionally, Plaintiffs pray that the Court AWARD costs of petition, subsequent pro-

ceedings and disbursements including attorney's fees and other expenses, and, GRANT such other and further relief as the nature of this cause may require.

COUNT II

Plaintiffs sue Defendants A.S. Abell Publishing Company, John Banach and Paul C. Bowen and say:

1. The facts and representations forementioned and those contained in the attached copy of an Arbitrator's Decision and Award are incorporated herein by reference.

2. In September of 1977, a final Arbitration Decision and Award was made in writing in favor of Plaintiffs against the A.S.Abell Publishing Company.

3. No subsequent application was filed to vacate, modify or correct said Arbitration Award.

4. All parties agreed to be bound by

the Arbitrator's determination without regard to arbitrability of the issues or status of the Collective Bargaining Agreement.

5. The Defendant Company, its agents and representatives, have failed to fully perform according to agreement and owe considerable sums of monies and other relief to Plaintiffs in accordance with the Award granted by the Arbitration Committee chaired by Arbitrator Myron L. Joseph.

6. With reckless disregard of Plaintiffs' rights and in spite of requests by Plaintiff Rajaram, Defendant Company continues to refuse to honor the express contract to be bound by the Arbitrator's Decision.

WHEREFORE, Plaintiffs respectfully request that Judgment for damages be entered in favor of Plaintiffs; (a) against Defendant A.S. Abell Publishing

Company, or Defendant John Banach or Defendant Paul C. Bowen; or (b) against all Defendants, the mentioned Company, officers and agents, or (c) apportion contributory amounts as the Court deems appropriate, in the total amount of Two Million, Eight Hundred and Fifty Thousand Dollars ($2,850,000.00). Additionally, Plaintiffs pray that the Court AWARD costs of petition, subsequent proceedings and disbursements including attorney's fees and other expenses and GRANT such other and further relief as the nature of this cause may require.

(Signature)
KONDIAN R. RAJARAM

(Signature)
EDWARD J. MAKOWSKI
1746 Eastern Avenue
Baltimore, Maryland 21231
(301) 563-0990

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

KONDIAN R. RAJARAM,
on behalf of himself and all
others similarly situated,

Plaintiff (sic)

v.

INTETRNATIONAL TYPOGRAPHICAL UNION, et al.,

Defendants

CIVIL ACTION NO. 84-2465 (sic)

AFFIDAVIT OF JEFFREY P. AYRES

1. I am one of the attorneys of record for the A.S. Abell Publishing Company (hereinafter "A.S. Abell"), John Banach, and Paul C. Bowen (hereinafter collectively referred to as the "Company Defendants") -- all of whom are Defendants in the above-captioned matter. Prior to the time that A.S. Abell was dismissed from Rajaram v. International Typographical Union, et al., Civil Action No. B-80-0012, in November 1983, I was also one of its attorneys of record in that lawsuit, as well. I understand that this Affidavit is being submitted in connection with the Company Defendants' Motion to Dis-

miss, or Alternatively, for Summary Judgment, and for an Award of Expenses, Including Attorneys' Fees, in Civil Action No. 84-2465. (sic)

2. After A.S. Abell was dismissed from Civil Action No. B-80-0012 in early November 1983, I heard nothing for several months from either Mr. Rajaram or his attorneys. On March 22, 1984, though, I was telephoned by Phillip Mizrach, one of Mr. Rajaram's attorneys in Civil Action No. B-80-0012. Mr. Mizrach told me that his client, Mr. Rajaram, was contemplating the institution of a class action against A.S. Abell in connection with an arbitration award rendered in the mid-1970's. Mr. Mizrach indicated that the class action perhaps could be avoided if A.S. Abell would agree to produce documents that could demonstrate to him why Mr. Rajaram's claims were not viable. Mr.

Mizrach also indicated that perhaps a class action could be avoided if A.S. Abell could demonstrate to him why any claims that related to the mid-1970's arbitration award were not barred by limitations. Finally, Mr. Mizrach indicated that, if A.S. Abell would consider giving Mr. Rajaram some money in settlement, a class action might be avoided.

3. At this point, I reminded Mr. Mizrach that only several months before, all of Mr. Rajaram's multitudinous claims against A.S. Abell had been dismissed on various grounds -- including limitations. Hence, I told him that I did not see how this latest claim of Mr. Rajaram possibly could be viable. However, I indicated to Mr. Mizrach that I would relay his offer to A.S. Abell and get back to him.

4. Within several days after my

conversation with Mr. Mizrach on March 22, 1984, I telephoned him again to discuss his offer of March 22. Mr. Mizrach was not present at the time. However, I spoke with Edward Jack Makowski, who has the same office address and telephone number as Mr. Mizrach. Mr. Makowski was also one of Mr. Rajaram's attorneys in Civil Action No. B-80-0012, and is counsel of record for Mr. Rajaram in Civil Action No. 84-2465. (sic) During our telephone conversation, Mr. Makowski indicated that he was aware of Mr. Mizrach's conversation with me on March 22, and was in a position to discuss the matter. Accordingly, I relayed to Mr. Makowski A.S. Abell's response to Mr. Mizrach's offer of March 22 on behalf of Mr. Rajaram.

5. I told Mr. Makowski that A.S. Abell would provide no documents and would offer no money to Mr. Rajaram.

Moreover, I told Mr. Makowski that Mr. Rajaram and his attorneys could do what they felt they had to do, as far as a lawsuit was concerned, with respect to the arbitration award from the mid-1970's. However, I warned Mr. Makowski that if Mr. Rajaram asserted a claim against A.S. Abell based upon that arbitration award, the chances were fairly high that A.S. Abell would conter-sue Mr. Rajaram and his attorneys (i.e., Messrs. Mizrach and Makowski) for having instituted vexatious and baseless litigation against A.S. Abell. The telephone conversation between Mr. Makowski and me then ended, and I heard nothing further from either Mr. Makowski or Mr. Mizrach until Mr. Rajaram instituted this lawsuit in mid-May 1984.

6. The above statements are true and correct to the best of my personal knowledge, information, and belief, and

involve matters upon which I am competent to testify.

(Signature)
Jeffrey P. Ayres

In accordance with 28 U.S.C. Section 1746, I declare under the penalty of perjury that the foregoing Affidavit is true and correct. Executed this 22nd day of June, 1984.

(Signature)
Jeffrey P. Ayres

VOLUME I

BALTIMORE TYPOGRAPHIC (sic) UNION LOCAL #12

VS.

A. S. ABELL COMPANY

BEFORE THE AMERICAN ARBITRATION ASSOCIATION

CASE NO. 14 30 1492 76 M/J

March 24, 1977

Lord Baltimore Hotel
Baltimore, Maryland

before:

PROFESSOR MYRON L. JOSEPH, ARBITRATOR

APPEARANCES:

Bernard W. Rubinstein, (sic) Esquire
on behalf of
Baltimore Typographic (sic) Union
Local #12

James P. Garland, Esquire
and Gilbert A. Abramson, Esquire
on behalf of A. S. Abell Company

ALSO PRESENT:

Theodore Kees
Jack Poist
John J. Banach
Paul C. Bowen
Hugh B. Meadowcroft
Richard L. Friedman

Reported by: M. A. Beaulieu, RPR, CM

GORE BROTHERS REPORTING COMPANY
221 East Redwood Street
Baltimore, Maryland 21202
837-3027

* * * *

(at pages 48-50)

MR. GARLAND: All right. Now, to put this in a legal arbitrable framework, the Company's position is simply this. An employee has a right, in order to protect his priority, to protect his job, has a right to be absent and to

cover his situation with a substitute. There is nothing in the contract nor in the history, nor in anything else, that says the Company has the concomitant obligation to put that substitute to work. The only obligation on the Company is not to terminate the absent regular situation holder, when he covers his situation by making a substitute available. ...

* * * *

MR. RUBINSTEIN: (sic) Put this on the record. The issue raised by Mr. Garland is obviously a much broader issue than was submitted, because the issue Mr. Garland raises is the right of the office to say no sub at all will be hired. This is a brand new issue and a position that I think we can conclusively demonstrate the Company has never taken. He has opened up a whole new area, but we are prepared to meet it...

ARBITRATOR: You mean even before the thirty days?

MR. RUBINSTEIN: (sic) That's right, ...

VOLUME II

BALTIMORE TYPOGRAPHIC (sic) UNION LOCAL 12

vs

A. S. ABELL COMPANY

AMERICAN ARBITRATION ASSOCIATION

CASE NO. 14 30 1492

BEFORE: PROFESSOR MYRON L. JOSEPH

Sheraton-Hopkins Inn
400 North Broadway
Baltimore, Maryland
May 23, 1977

APPEARANCES:

Bernard W. Rubenstein, Esquire,
On behalf of Local 12

James P. Garland, Esquire,
On behalf of A. S. Abell Company

Reported by:
Lawrence F. St. Yves

Gore Brothers Reporting Company
221 East Redwood Street
Baltimore, Maryland 21202

(at pages 18-19)

* * * *

MR. GARLAND: Let me make two little comments. I agree whole-heartedly with Mr. Rubenstein that the issue as raised by the parties in this case is whether the A. S. Abell Company has the right to refuse to hire a substitute after thirty days after an absence of a regular situation holder for thirty days.

However, the colloquy which appears in the transcript of the prior session at Pages 56 through 58 and 59 indicate that you, Mr. Joseph, and probably quite correctly, feel that is necessary to also decide the subsidiary issue of what I think everybody has come to regard as the Day 1 issue.

THE ARBITRATOR: Excuse me. Let's make the record clear. This did not come from me. It became necessaary for me to say I have determined because the

Company came forward and said that one of its arguments in support of its position was that it had that right.

Since that is so, it then becomes necessary for me to do it. I don't want the record to indicate that I enlarged my jurisdiction. I did not.

MR. GARLAND: Correct.

THE ARBITRATOR: Thank you. Let's go beyond this since I now have the floor.

...

UNITED STATES DISTRICT COURT
BALTIMORE, MARYLAND

KONDIAN R. RAJARAM, Plaintiff,

v.

INTERNATIONAL TYPOGRAPHICAL UNION, et al, Defendants.

Docket No. B-80-0012

Baltimore, Maryland
April 6, 1987 (entered February 5, 1988)

TRANSCRIPT OF TRIAL
BEFORE HONORABLE WALTER E. BLACK, JR.
UNITED STATES DISTRICT COURT JUDGE

APPEARANCES:

For the Plaintiff:

EDWARD JACK MAKOWSKI, ESQUIRE
PHILIP (sic) MIZRACH, ESQUIRE
1746 Eastern Avenue
Baltimore, Maryland 21231

For the Defendants:

ABATO, RUBENSTEIN & ABATO
BY: BERNARD W. RUBENSTEIN, ESQUIRE
NANCY DONAHUE, ESQUIRE
2360 W. Joppa Rd., Suite 308
Lutherville, Maryland 21093-4697

O'DONOGHUE & O'DONOGHUE
BY: BRIAN A. POWERS, ESQUIRE
ELLEN O. BOARDMAN, ESQUIRE
4748 Wisconsin Ave. N.W.
Washingtron, D.C. 20016

Audio Operator: V. Cameron

Proceedings recorded by electronic sound recording, transcript produced by transciption service.

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Trenton, New Jersey 08690

586-2311 (609) 586-4345

(at page 31)

...

MR. MAKOWSKI: Magistrate Smalkin ruled that the 301 claims in this case, any 301 claims in this case were with

regard to retaliation. They were dismissed. He ruled in 2465 that that part of the case was part of this case. When it was dismissed in the state court, it was based on res judicata. However, Magistrate Smalkin found in 2465, that those claims are in this case. The only 301 claim that Magistrate Smalkin put out was with regard to whether or not it was retaliatory treatment, whether or not there was a breach of contract, Magistrate Smalkin did not dismiss such claims.

And he put his order in terms of types of claims. Under 301, he did not list that. ...

* * * *

(at pages 143-145)

KEES - DIRECT

...

BY MR. MAKOWSKI:

...

Q Mr. Kees, have you directed Mr. Rajaram toward any employment opportunities since 1978?

A I gave Mr. Rajaram a run down of our allied shops and union shops. ...

Q When did you give him that run down, Mr. Kees?

A It was some time ago, but I remember giving it to him.

Q Have you corresponded with him by mail with regard to any other employment opportunities?

A I don't believe so.

Q You said some time ago. Was that in 1978 that you gave him the run down of the other shops?

A It was probably around the time when he took the buy-out from the Sunpaper when he gave up his sub situation.

Q That would be around July of 1978?

A Right. Okay.

Q At that time he was -- hadn't com-

pleted his within the union appeals or his grievances, is that correct?

A That wouldn't have any bearing on it, no. ...

Q Your testimony is, however, that you haven't corresponded with Mr. Rajaram since July of '78 by mail? You've sent him nothing?

A Just through the normal channels of the mail he received from the union, being a union member, he gets the bulletin, he gets the ballots, he gets -- yes, I probably even sent him a letter asking him to vote for me, if you want to call that correspondence.

Q Okay. You didn't -- I meant not advising him specifically if any rights or employment opportunities.

A I didn't have any to advise him of.

Q Okay. And no employment opportunities have come up for Mr. Rajaram since 1978?

A Not to my best of knowledge, no.

* * * *

(at page 167) ...

Q Mr. Kees, therefore you're identifying this as the letter which came from Mr. Banach, which caused the removal of Mr. Rajaram from the Fleisig TF?

A It caused the removal of anyone on a TF, including Mr. Rajaram.

Q And just where exactly in this letter does it state --

A It doesn't. For some reason or other, they failed to put it in, but they meant Mr. Rajaram, because they paid him out of the arbitration case. They wouldn't have done it if it wasn't meant to be. He was in the arbitration case, and that's just what the arbitration case was over. And Mr. Rajaram was involved. It was an error by the company. They didn't put him

in there, but they told us to take him -- excuse me, they had the chairman take him off the board. You'll have to talk to Mr. Poist about that.

UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND

KONDIAN R. RAJARAM, Plaintiff,

v.

INTERNATIONAL TYPOGRAPHICAL UNION, et al, Defendants.

DOCKET NO. B80-12 (sic)

April 8, 1987 (entered 2-5-1988)

TRANSCRIPT OF TRIAL
BEFORE HONORABLE WALTER E. BLACK, JR.

APPEARANCES:

For the Plaintiff:

EDWARD JACK MAKOWSKI, ESQUIRE
PHILLIP MIZRACH, ESQUIRE
1746 Eastern Avenue
Baltimore, Maryland 21231
563-0990

For the Defendant: (sic)

BERNARD W. RUBENSTEIN, ESQUIRE
PATTY L. PARSONS, ESQUIRE,

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Proceedings recorded by electronic sound recording, transcript produced by transciption service.

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Trenton, New Jersey 08690

586-4345 (609) 586-2311

(at pages 11-14) Rajaram - Direct

(Questions from Mr. Mizrach) ...

Q Did you indicate that you were member of the union to Mr. Kees at that time?

A I did not understand the question.

Q Did you indicate to Mr. Kees that you were a member of the union at that time?

A Yes, when we were sitting in his office, I told him that I had taken four years of apprenticeship training program and successfully passed it in Rochester, that I was a journeyman,

card, I told him he was free to make any check investigation through his phone to verify my journeyman status.

Q Did Mr. Kees tell you that there wasn't any need to start in Baltimore, a change in technology?

MR. RUBENSTEIN: Objection. Objection.

THE WITNESS: He did not tell me anything like that.

THE COURT: What possible relevance does that have?

MR. MIZRACH: Impeachment, your Honor, of Mr. Kees' testimony regarding -- Well, I am going to get into, your Honor, exactly whether -- we have asked your Honor for some additional post-trial relief regarding -- providing the interlocutory determinations, your Honor, and I think just briefly I might just with the question --

THE COURT: I didn't understand

what you said, Mr. Mizrach.

MR. MIZRACH: It goes also to a further aspect of it, your Honor. We have also asked your Honor to advise regarding a fraud count against the union, regarding --

THE COURT: There isn't any fraud count against the union.

MR. MIZRACH: I understand that. I would ask your Honor to advise a count going to that.

MR. POWERS: Your Honor, at the pretrial conference, they raised these matters and you made it emphatically clear they were not part of this case.

THE COURT: Okay. This is in reference to something in the pretrial order.

MR. MIZRACH: Yes, your Honor, Number 4.

THE COURT: Number 4. What do you mean by Number 4? What page is it on?

MR. MIZRACH: I don't have that particular document in front of me, your Honor. I think it's --

THE COURT: Oh, it's your fourth one under amendments to the pleadings.

MR. MIZRACH: Ye your Honor.

THE COURT: Yo re not telling me, Mr. Mizrach, I g d that amendment, are you?

MR. MIZRACH: No, your Honor. I don't think it was addressed, frankly, but I would ask your Honor to defer --

THE COURT: My recollection is for some reason, I can't remember why now, I didn't get your pretrial order soon enough to really review it before we --

MR. RUBENSTEIN: As a matter of actual fact, your Honor did deny it at the pretrial conference. We went through all this for almost an hour at the pretrial conference, in which they

wanted to amend the pleadings and to bring back all the things that had been dismissed in summary judgment and they wanted to introduce evidence to attempt to convince your Honor that somehow or other you should change your mind as to what happened in summary judgment and it was --

THE COURT: Was there -- Refresh my recollection, Mr. Rubenstein, was there a fraud count in here previously?

MR. RUBENSTEIN: Well, there is this so-called quasi-contract or conspiracy count or misrepresentation, materialness, negligent misrepresentation is, I think, what they call it.

THE COURT: That's gone. That one is gone.

MR. RUBENSTEIN: That's right, and that's exactly what all this has to do.

THE COURT: So your Number 3D

which was, then you become faced with a fraud perpetrated by the union, that's an attempt to revive that count?

MR. MIZRACH: Pardon me, your Honor.

THE COURT: Now, your 3D is an attempt to revive the count that you had before about quasi-contract?

MR. MIZRACH: No, this is a --

THE COURT: Didn't you attempt to put fraud in the case the first time at the pretrial conference?

MR. MIZRACH: I believe, your Honor, that we think that the same facts relate back and could be addressed as a fraud count under a pendent claim under Maryland law and I don't think-- I'm not sure whether it was addressed directly or not, your Honor. Certainly, the same evidence would apply to at least some of it and we would ask your Honor to hold that ruling pending this

matter.

THE COURT: There is no way in 1987 we are going to amend this case to put a fraud count in, to try in this proceeding, when it has been very clearly delineated by Magistrate Small. (sic) Here we've got five counts, we're trying all five counts and that isn't one of them, so your objection, Mr. Rubenstein, is certainly sustained, and let's go on to something that has got something to do with this case. ...

* * * *

(at pages 89-92)

Rajaram - Direct

...

MR. MIZRACH: And right behind that, your Honor, your Honor will notice the amount of retro pay by the subs at the Sunpapers and Mr. Rubenstein has alleged that the $1,300 amount --

MR. RUBENSTEIN: Now, I object, I

haven't alleged anything.

THE COURT: In this thing.

MR. RUBENSTEIN: I don't know what -- I'm not going to be held by way of evidence to anything that --

THE COURT: What is your point about the list of --

MR. MIZRACH: Well, Mr. --

THE COURT: I thought they were the arbitration payments and the $1,300 of Mr. Rajaram, what does that have to do with this chart?

MR. MIZRACH: Well, just for the point of clearing up Mr. Poist's testimony, your Honor. Mr. Poist has testified under oath that that particular amount dealt with, as your Honor just said, the arbitration amount. And I want to point out to your Honor that the document speaks for itself in regard to wehat it is for.

MR. RUBENSTEIN: I don't know

where we are going on this thing.

THE COURT: I'm just trying to find out, Mr. Rubenstein, what that chart, with the amounts and Mr. Rajaram's $1,300 has to do with the chart on the board.

MR. RUBENSTEIN: I don't know, that's my point.

THE COURT: That's the question, Mr. Mizrach.

MR. MIZRACH: Pardon me, your Honor.

THE COURT: How does this chart with the amounts, that includes Mr. Rajaram's $1,300, fit into this chart?

MR. MIZRACH: Oh, that does. It is just a matter of clearing it up while we have the same piece -- you have the same document in your hand, your Honor. I am indicating to your Honor that Mr. Poist testified under oath, for your Honor, that the $1,300 amount was for

the arbitration.

THE COURT: All right. And you-

MR. POWERS: That is a mischaracterization. He said that if a check came down for (sic) the Sunpapers, and he took the check and registered that check for the purpose of the union dues, he said I don't know how much they got, I didn't see the check in their hands, they introduced as evidence the check of $1,305.

MR. MIZRACH: And we would point out to your Honor --

MR. RUBENSTEIN: Of $1,305.

MR. POWERS: Right.

MR. RUBENSTEIN: And now he's claiming, I don't know what he's claiming.

THE COURT: Well, I think he wants to elicit from Mr. Rajaram that that's for something other than what you all think it's for.

MR. MIZRACH: Well, Mr. Poist said there is a check for $1,305 which Mr. Makowski showed and he says, well, you know, I guess it's for the arbitration.

THE COURT: Okay. Well --

MR. MIZRACH: But it came from the Sunpaper --

THE COURT: All right. Well, let's find out what Mr. Rajaram thinks it is, what did you get $1,308.55 for, Mr. Rajaram?

Q Answer that question.

A I did not hear all the question.

Q What was the $1,308 for?

A That was retroactive pay, as far as I can remember and understand and believe. That retroactive pay, by that I mean that the contract, 74-76 contract, had a stated ending date of December 31, '76, however, the union and the company did not have a con-

tract from January 1, 77 until July 5, 78. However, we were working under the condition of pay scale as it existed on December 31, '76 and we continued in the same scale until July 5, '78. When they signed the new contract on July 6, '78, that also provided that there shall be a retroactive pay made for the time of the contract's effective date, which would be January 1, '77. And from January 1, '77, the new scale which applied, came into effect on July 6th, there was maybe $2, $10, $15, based upon how much we had worked each week from January 1, '77. Those $5, $10, $15 each week, multiplied by about eighteen, nineteen months, amounted to close to, in my case, maybe $1,300 something, and another maybe $15.

THE COURT: So that's what you think it was, the union representative

thought it was the arbitration award, since neither of them are part of this case or issues in this case, that's cleared up that there is a dispute and we don't need to address it now. Why don't you get back to the chart, Mr. Mizrach.

MR. MIZRACH: Well, just for this point, your Honor.

Q Mr. Rajaram, if you had worked more periods in January, would the retroactive pay have increased?

MR. RUBENSTEIN: Well, isn't that self-evident?

THE WITNESS: Please ask me that question again.

MR. MIZRACH: Well --

THE WITNESS: I get interrupted when somebody --

* * * *

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MARYLAND

KONDIAN R. RAJARAM, Plaintiff,

(Presented to the district court prior to Pre-Trial Conference held on March 20, 1987, but not entered by the clerk until May 7, 1987.)

INTERNATIONAL TYPOGRAPHICAL UNION,
BALTIMORE TYPOGRAPHICAL UNION No. 12,
SUNPAPERS CHAPEL OF
BALTIMORE TYPOGRAPHICAL UNION No. 12,
JACK POIST, and
GARY KIDWELL, Defendants

CIVIL ACTION No. B-80-0012

JOINTLY PROPOSED PRE-TRIAL ORDER OF ALL PARTIES

The parties, by their counsel, pursuant to Local Rule 35 and F.R.Civ.P. Rule 16, submit the following Jointly Proposed Pre-Trial Order.

* * * *

This is a civil action which plaintiff brought pro se in January of 1980 against his unions and union-officers, i.e., the union known as

("ITU"), its chartered Baltimore-area local subordinate union known as Baltimore Typographical Union No. 12 ("BTU-12"), BTU-12's one component part known as Sunpapers Chapel of Baltimore Typographical Union No. 12 ("Sun-Chapel"), and the two union officers Jack Poist and Gary Kidwell.

(Sun-Chapel meant the group of ITU members who were employed in the composing room of A.S. Abell Publishing Company ["Abell"], the publisher of daily newspapers known as Baltimore Sunpapers.

...

* * * *

In September of 1982 plaintiff obtained counsel and an amended complaint was filed. In January of 1983, with permission of the Court to further amend his complaint, plaintiff filed his Second Amended Complaint ("SAC").

defendant, i.e., Abell, the employer of the plaintiff during 1974-78. ...

* * * *

Subsequently, on January 1, 1987, the ITU merged with the Communications Workers of America (CWA). Under the terms of the merger, the ITU ceased to exist and became The Printing Publishing and Media Workers Sector of the CWA (The Sector). ...

* * * *

III. Amendments Of Pleadings Of The Plaintiff.

A. In view of the decision of the Court of Appeals of Maryland in Flaherty v. Weinberg, 303 Md. 116 (1985), 492 A.2d 618 and the Court of Special Appeals of Maryland in Weisman et. al. v. Connors, No. 522, September Term 1986, filed January 13, 1987 (copies attached hereto), which show that relief can be granted under Maryland law for

negligent misrepresentation, plaintiff will move the instant Court, under F.R.Civ.P. Rule 54(b), to allow plaintiff to seek relief under a negligent misrepresentation theory and to place back SAC Count XVI's quasi contract claims, which were previously dismissed interlocutorily by the instant Court, as viable claims.

B. Plaintiff will pray that an order be made directing ITU, i.e. the Printing, Publishing and Media Workers Sector of the Communications Workers of America including its assigns, subordinates, and its affiliates to make their lawbooks consistent with L.M.R.D.A. by limiting their laws, including ITU by-law section 43 and BTU-12 laws and the laws of their affiliates, to a period of time not to exceed a lapse of four months so that a member can promptly seek redress in courts or public agencies without fear

of being expelled from one's union membership and livelihood.

C. Plaintiff will pray that an order be made to reinstate cause for not being compensated for being the cause or instrument in making changes in ITU bylaws.

D. Plaintiff will pray that he be compensated for the fraud perpetrated by the unions in not advising him that his attempt to gain permanency by climbing the seniority ladder would be futile in view of the known need for less employees by Abell as a result of automation before he embarked on that course of conduct.

UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND

KONDIAN A. (sic) RAJARAM, Plaintiff,

vs.

INTERNATIONAL TYPOGRAPHICAL UNION,

et al., Defendants.

DOCKET NO. B-80-12 (sic)

APRIL 9, 1987 (entered 2-5-1988)

TRANSCRIPT OF TRIAL
BEFORE HONORABLE WALTER E. BLACK, JR.

APPEARANCES;

For the Plaintiff:

EDWARD JACK MAKOWSKI, ESQUIRE
PHILLIP MIZRACH, ESQUIRE
1746 Eastern Avenue
Baltimore, MD 21231
563-0990

For the Defendant: (sic)

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* * * *
(at pages 3-27)

THE COURT: Good morning.

ALL COUNSEL: Good morning, your Honor.

MR. RUBENSTEIN: Your Honor.

THE COURT: Yes, Mr. Rubenstein.

MR. RUBENSTEIN: This morning, about three or four or five minutes ago, we received a revised exhibit list from the plaintiff which adds, I don't know, two, four, six, about eight, ten, twelve, fourteen, sixteen, eighteen, twenty, about twenty-five or thirty more exhibits. Looking it over, there is a number that has to do with the 1979 EEOC case, a conciliation letter, there are other letters, there is letters (sic) of mine to the National Labor Relations Board in December of 1977. Aside from the fact that, I think, they are irrelevant, to bring in now on the fourth day of trial another twenty-five exhibits on an exhibit list, I don't know what has happened during the trial that now needs to have this and I

thought your Honor had ruled that the exhibit list should be complete as of at least yesterday morning.

THE COURT: Yeah. Mr. Makowski, what happened?

MR. MAKOWSKI: Your Honor, something has happened during the course of this trial which has required us to revise this exhibit list. I believe the Court is laboring under a misconception as to what has occurred in other forums. A statement was made yesterday with regard to the arbitration award, that was resolved in another forum. So therefore, in --

THE COURT: That is not before us. I know you all don't agree with that, but that's my position.

MR. MAKOWSKI: Well, your Honor -- Your Honor, if I might, there was an action filed in the State Court which asked that the State Court confirm an

arbitration award. There was an action brought in this case, B-80-0012 and Magistrate Smalkin later on in case B-84-2465, which was the -- a case filed at the same time as the case in State Court seeking confirmation and it was moved over to the Federal Court. Magistrate Smalkin found that he so cited in his report on 2465 that the matter of the arbitration award was part of case B-80-0012, which is the case presently before the Court.

Now, he did make a finding in B-80-0012 in this particular case that Mr. Rajaram couldn't allege that the getting rid of substitutes in July of 1986 (sic) was a retaliation on the part of the union. However, there was no claim with regard to failure to represent against the union for not enforcing that arbitration award.

Now, the State Court made a

determination, that the action against Abell was barred because of limitations. If Mr. Rajaram's claim against Abell was barred because of limitations, he couldn't enforce it against Abell. However, Mr. Rajaram had no standing to bring an action against the union during the first three year period, because the union was his exclusive representative.

Now, the union was the only one, they were the ones that had to write to bring an action to enforce that arbitration award. They failed to do so. Mr. Rajaram's claim wouldn't have accrued until the union's time passed; or if the union unequivocally notified him that they did not intend to enforce his rights under that arbitration award. Therefore, there was no other forum which has decided this matter, your Honor. This was --

THE COURT: Which count is it in

this case?

MR. MAKOWSKI: Your Honor, this-- Magistrate Smalkin found in 2465 that it was, or should have been, part of this case. That --

THE COURT: Well, is it in this case?

MR. MAKOWSKI: According to the report in 2465, it could be in this case and that's why --

THE COURT: It is not.

MR. MAKOWSKI: Well, your Honor--

THE COURT: I mean, I have to view it. I mean, it is not.

MR. MAKOWSKI: We would like it to be part of this case, your Honor, and based on --

THE COURT: Well, Mr. Makowski, we are not amending this complaint at this point for you to add a new count on the fourth day of the trial. It is a case that has gone on for seven years.

MR. MAKOWSKI: Your Honor, I'm not --

THE COURT: It wouldn't be timely in any event, I'm sure.

MR. MAKOWSKI: Your Honor, I'm not requesting --

MR. RUBENSTEIN: So what do you want him to do?

MR. MAKOWSKI: Your Honor, I'm not requesting an amendment, I think the Court stated yesterday that this matter of the arbitration was determined in another forum. Which forum? I have looked at the EEOC proceedings; I have looked at the NLRB proceedings; I was involved in the State Court proceedings.

THE COURT: I am sorry, Mr. Makowski, if my inadvertant use of words have caused you all to burn the midnight oil to reconstruct an issue, because I didn't mean it that explicitly. I'm not familiar with all this other litigation

you all have been through. All I meant was that that was not -- that was being addressed elsewhere, if at all. I wasn't saying that there was a dispositive ruling on it.

MR. RUBENSTEIN: Well, if your Honor will please, also in the subsequent case, the case was dismissed b your Honor. Judge Smalkin did issue a report, but then you affirmed it in a reasonably, I wouldn't say lengthy, but in an opinion which actually granted the motions on two rights. One that it was a part of this case and had been dismissed by Judge Smalkin on the grounds of limitations and that in any event, there were limitations.

Now, they brought this suit, there was a six-month statute of limitations which Judge Smalkin applied and which you applied, the so-called Delka Stella (phonetic).

THE COURT: Delka Stella.

MR. RUBENSTEIN: They brought this case almost three years, or two years at any event, after the completion of the internal union affairs. Internal union thing was ended well, well, well before he brought the suit. First, after the internal union affairs, he then went to the EEOC, he went through all the EEOC proceedings and then he filed suit in 1980 and six months had long since prepared. He went to the Court of Appeals in the Sun Papers case and the Court of Appeals said that limitations with respect to the arbitration had long since passed and that he knew, or should have known, of the arbitration way back when.

So it is not a question of the by-law preventing him from filing suit. I think he would have had a very ligitimate argument. We may have-

- arguendo, he may have had an argument that the internal union proceedings told his right to file suit. That is certainly a legitimate argument. I'm not certain that that's the law, but I think that that's a legitimate argument.

But in any event, it was well after six months, and that's what Judge Smalkin found with respect to the arbitration in this case and in the subsequent case.

MR. MAKOWSKI: Your Honor --

THE COURT: It's not all clear to me, Mr. Makowski, why you would want to put all that into evidence in this case, to rehash the procedural history that you and Mr. Rubenstein have just alluded to.

MR. MAKOWSKI: I would like the Court to be under a fair impression as to what the law is with regard to this matter. Mr. Rubenstein is indicating to

the Court that Magtistrate Smalkin dismissed a hybrid claim against the company and the union because that had to be brought within six months, to enforce that arbitration award. However, --

MR. RIUBENSTEIN: Count 8, Count 8.

MR. MAKOWSKI: The union had a period -- the courts have found, the Federal Courts have found that the time for enforcement of a contract is determined by State Law. We brought a proceeding in State Court to have that arbitration award enforced against the company. The State Court found that Maryland's general three-year statute of limitations applied to an action to enforce the contract itself. Magistrate Smalkin found that that arabitration, what was in the transcript of the arbitration, that a labor -- a collective bargaining agreement had been reached. Therefore, it was a contract and there-

fore, the Federal Court had jurisdiction. That was in the context of a removal act, a removal motion.

Now, the union, therefore, has now been determined to have had three years to bring an enforcement action on that arbitration award. Although there is a six-month limitations period for a hybrid claim, that would be a claim brought by Mr. Rajaram against both his company and his union, that six-month period couldn't start under present law until the union's time to enforce had passed.

Now, they had three years to bring it.

THE COURT: Well, when does that run out?

MR. MAKOWSKI: Your Honor, that makes his claim that he has brought, any claim that he has brought against the union, for failure to enforce, which

either was or should have been, or could have been, part of this suit, a timely file.

MR. RUBENSTEIN: That would have been in 1980. In any event, that would have been in 1980.

THE COURT: Well, even if it is timely, all it means is that the union is going to be sued by Mr. Rajaram again and that's not going to --

MR. RUBENSTEIN: That's right, which will be the third action for the same thing.

THE COURT: No, I think that's not any shock to anybody, it's not in this case. Mr. Makowski, are you telling me that it is in this case or it is not in this case?

MR. MAKOWSKI: I'm telling you that Magistrate Smalkin found that it either was or could have been part of this case.

THE COURT: No, that's not what he found. Come on, Mr. Makowski, I'm not going to retry all this other other (sic) litigation of yours. That's part of the trouble you guys have with this business, you can't leave the things alone that you have already tried. Mr. Rajaram can't leave the things alone that he tries and wins. You all can't leave alone things you try and lose. I am only trying this case, I am only trying the five counts that are still alive, and you are not going to reopen any of the old litigation in this Court.

MR. MAKOWSKI: Can I try it in the Fourth Circuit?

THE COURT: You can try it in the Supreme Court. You can tackle the Circuit Court, the Court of Special Appeals, the Court of Appeals again, but you are not going to try any more here.

MR. MAKOWSKI: I understand, your

Honor.

THE COURT: Okay.

MR. MAKOWSKI: And we are not, at this time, absolutely prepared to go forward with this.

THE COURTs: Okay. Well, file a new suit.

MR. MAKOWSKI: We cannot, your Honor --

THE COURT: I only have one chance out of nine of getting it, so file a new suit, Mr. Rubenstein and Mr. Powers can see you again at a later date.

MR. MAKOWSKI: Your Honor, we would like -- Mr. Rajaram would be barred then, his claim could be possibly considered barred for a late file, however, this case would have been timely filed.

MR. RUBENSTEIN: Well, you have a case now --

THE COURT: Well, unfortunately, in 1980, you must not have done it right, because Judge Smalkin threw you out.

MR. MAKOWSKI: Your Honor, I would like to offer a copy of Magistrate Smalkin's report in Case B-84-2465.

MR. RUBENSTEIN: Objection.

MR. MAKOWSKI: It is marked as Exhibit Number 84.

THE COURT: Objection sustained. It is marked as an exhibit, that's for identification.

MR. MAKOWSKI: Fine, mark it.

THE CLERK: Plaintiff's Exhibit 84 marked for identification.

MR. MAKOWSKI: Your Honor, I would further like to offer -- I mailed to the Court previously a copy of the decision which was given by the Court of Special Appeals in the state action which Mr. Rajaram brought seeking en-

forcement -- seeking to have the arbitration award confirmed and enforced. I mailed a copy to the Court and Mr. Rubenstein also received a copy that was mailed to him from Attorney Jeffrey Ayres, copies of that have previously been provided to everyone.

MR. POWERS: Your Honor, I don't want to have a rebuttal of this, except to say that his statement of the law, start to finish in this area, has no relationship to what the law is.

MR. RUBENSTEIN: Absolutely no relationship.

THE COURT: Well, I guess Mr. Powers (indiscernible) doesn't need to be rebutted, but whatever the law is, it doesn't seem to me to have anything to do with what is before the Court.

MR. POWERS: And I agree with that, so I am not going to belabor it, except to -- it is fantastic what he is

saying, because it is --

MR. MAKOWSKI: Your Honor, whether or not that is my statement or my interpretation of the law as I have looked into it in that area is accurate, may have to be determined at a future date. However, I want to present this, that we are not -- we have never had an opportunity to litigate a claim against the union for failure to represent-- for its failure to enforce that arbitration award in which Mr. Rajaram would have been a beneficiary.

Mr. Rajaram had vested rights in that and it couldn't be determined until the transcript of the arbitration was acquired by him, that he didn't have standing even to bring the action until the union's time to enforce had elapsed.

THE COURT: I'm sure you will try again, so I know they will look

forward to hearing from you. Go ahead. What else do you have tell me this morning?

MR. MAKOWSKI: Your Honor, I also have some matters which went before the NLRB and the EEOC indicating there was - THE COURT: What do they have to do with this case?

MR. MAKOWSKI: Well, your Honor, they were just -- they would clearly show that the matter was not determined by the NLRB or by the EEOC and the State Court -- opinion by the Court of Special Appeals, the State Court gave its opinion as to what state law is for the time to enforce a labor contract or any contract.

MR. RUBENSTEIN: And the suit against both was then removed because it was a Federal issue, Federal law applied.

THE COURT: That is other litiga-

tion, not this litigation.

MR. MAKOWSKI: I would like to introduce -- offer Exhibit 319.

THE CLERK: Plaintiff's Exhibit 319 marked for identification.

MR. RUBENSTEIN: Objection.

THE COURT: Well, I guess we marked it for identification, what is it, Mr. Makowski?

MR. MAKOWSKI: Your Honor, this is a letter from the NLRB.

MR. RUBENSTEIN: To me.

MR. MAKOWSKI: To Mr. Rubenstein and it is evidence of the fact that this matter was not resolved by the NLRB.

THE COURT: What matter was not resolved by the NLRB?

MR. POWERS: The arbitration award.

MR. MAKOWSKI: The arbitration matter.

THE COURT: Okay.

MR. POWERS: Your Honor, how can an attorney introduce an exhibit?

THE COURT: He can have anything marked for identification he wants, Mr. Powers.

MR. MAKOWSKI: Yes.

THE COURT: As long as -- I assume the fact that you are going to object and I am going to sustain it, doesn't (indiscernible) Mr. Makowski before the Fourth Circuit that I should have let it in. You do object, I gather?

MR. RUBENSTEIN: Yes.

THE COURT: And the objection is sustained.

MR. RUBENSTEIN: The problem is, I can see it only too well.

MR. MAKOWSKI: Your Honor, I would like to offer Exhibit Number 301.

THE CLERK: Plaintiff's Exhibit 301 marked for identification.

THE COURT: Is that really some case before Judge Northrop?

MR. RUBENSTEIN: This was a case that I filed in 1978 to enforce the arbitration award and was eventually dismissed some year (sic) later as a result of our settlement with the Sunpapers is what it is.

THE COURT: Okay, and you marked it for identification?

THE CLERK: Yes.

MR. RUBENSTEIN: An objection.

THE COURT: If it is being offered in evidence, objection sustained.

MR. MAKOWSKI: Your Honor, I would proffer to the Court that based on evidence that has been elicited during the course of this trial, Mr. Rajaram was not -- the union did not make communications with Mr. Rajarasm after July of 1978. That this action that was filed in the Federal Court by the union

seeking enforcement, which was dismissed by them in September of 1978, I believe. Mr. Rajaram received no notice based on their testimony of this dismissal nor did he even have complete notice and knowledge of the rights which had vested and accrued in him, based on that arbitration decision.

He had previously seen a letter which was issued by John Banach saying that certain people should be taken off certain TF's would be made foreman.

MR. RUBENSTEIN: Oh, if your Honor please, you know, --

MR. MAKOWSKI: I won't argue the entire case, your Honor.

MR. RUBENSTEIN: We are in the fourth day of this thing.

THE COURT: I know. Mr. Makowski is making a record for higher authority now. Please let him finish it.

MR. RUBENSTEIN: Okay.

MR. MAKOWSKI: I would like to offer Exhibit Number 322, which is a letter from Mr. Rubenstein, as representative of the union, to the NLRB.

THE CLERK: Plaintiff's Exhibit Number 322 marked for identification.

MR. MAKOWSKI: And these documents, with regard to the NLRB, your Honor, were obtained by my office through the Freedom of Information Act, and they weren't obtained until 1984.

MR. RUBENSTEIN: If they are to be introduced, we object.

THE COURT: Are they being offered in evidence?

MR. MAKOWSKI: Yes, your Honor.

THE COURT: Yeah. Do you object?

MR. RUBENSTEIN: Yes.

THE COURT: Sustained.

MR. MAKOWSKI: I would like to offer Exhibit Number 326.

THE CLERK: Plaintiff's Exhibit

Number 326 marked for identification.

THE COURT: And what's that documentation?

MR. MAKOWSKI: Your Honor, this is a letter reading the same arbitration award when appeal was taken of the earlier ruling by the NLRB and they made a decision that they would not act on it, because they found that it was not an unfair labor practice to refuse to honor an arbitration award. That such an action was not designed to break a labor union and that the action basically should be an action to enforce a contract, rather than proceeding before the NLRB.

MR. RUBENSTEIN: Well, none of this says that in this letter, but it is --

MR. MAKOWSKI: But it is in --

MR. RUBENSTEIN: It is a letter from me and I certainly --

THE COURT: Okay, in any event, you do offer it, Mr. Makowski?

MR. MAKOWSKI: Yes, your Honor.

MR. RUBENSTEIN: Objection.

THE COURT: Objection sustained.

MR. POWERS: Your Honor, for the record, I join in the objections that have been on all these exhibits.

THE COURT: Okay. Well, I guess the main thing is just to say it is not in.

MR. MAKOWSKI: I would like to offer a letter from the EEOC, determination attached to it is the 1978 order and a consent decree and a dismissal which was entered in Case JH-79-1826, which was the action -- which was a complaint which resulted from a complaint which Mr. Rajaram took to the EEOC and this was the determination and the final results of that, which further indicate that the arbitration proceeding

was not part of that case.

THE CLERK: That is Exhibit 318.

THE COURT: That is in our court?

MR. MAKOWSKI: It was in this court, your Honor.

MR. RUBENSTEIN: No, this is a decision -- a determination by the EEOC that we have, that's what we have.

MR. MAKOWSKI: Your Honor --

MR. RUBENSTEIN: A determination by the EEOC.

THE COURT: I thought there was some reference to a JH trial, I thought Judge Howard had surfaced in this case.

MR. MAKOWSI: Well, I don't -- Yes, that's correct, your Honor. The final order --

MR. RUBENSTEIN: But that's not what this exhibit is.

THE COURT: Well, in any event, you do offer them into evidence?

MR. MAKOWSKI: Yes, your Honor.

MR. RUBENSTEIN: Oh, I see, there is an order by Judge Howard. I have no objection to this. As a matter of fact, it should be --

THE COURT: I get to look at that one.

MR. RUBENSTEIN: It should be a part of the case. Well, it's the order -- the consent decree is not here, it's an order -- I think the consent decree should also be a part of this.

THE COURT: What was the subject matter of this litigation?

MR. RUBENSTEIN: The subject matter of the litigation was the by-law.

MR. POWERS: It was all three, the TF, the job bypass --

MR. RUBENSTEIN: Yeah, the determination was on all the issues that are before the Court in this case.

THE COURT: This is the consent decree that has been alluded to in this

case.

MR. RUBENSTEIN: That's true.

THE COURT: It's not the by-law.

MR. RUBENSTEIN: This is --

THE COURT: That's where I've heard it before.

MR. RUBENSTEIN: Right. This is the determination --

MR. MAKOWSKI: The order went with the consent decree, your Honor.

MR. RUBENSTEIN: That this is the determination that led to the right to sue letter in this case and the consent decree, which was on the by-law.

THE COURT: Okay. Well, in light of the fact there has been no objection, and it sounds like that, indeed, may be helpful to the Court, yeah, Miss D'Amico you ought to admit this one.

THE CLERK: Plaintiff's Exhibit 318 marked in evidence.

MR. RUBENSTEIN: If your Honor

please, this was -- you remember at the beginning that the only two parties that were before the EEOC at that time were the Sunpapers Chapel of the International Union (sic) and this, of course, is further evidence of that.

THE COURT: The same procedure.

MR. MAKOWSKI: Based on that later statement, your Honor, I would like to offer Exhibit Number 316 for identification, which dealt with the conciliation arrangements and the offers of conciliation between the EEOC and the company.

MR. MIZRACH: And the union.

MR. MAKOWSKI: I'm sorry, and the union.

THE COURT: What's this now?

MR. RUBENSTEIN: I don't know. Did he not give you a copy?

MR. MAKOWSKI: This is with regard to that EEOC action.

MR. RUBENSTEIN: Well, it would seem to me that conciliation prior to-- any conciliation prior to the entrance of a consent decree is irrelevant. We would certainly object.

THE COURT: What is the document?

MR. RUBENSTEIN: They are a series of letters back and forth on conciliation proposals, apparently.

THE COURT: Which ultimately led to the consent decree.

MR. RUBENSTEIN: Which ultimately led to the consent decree. Actually as I look at these --

THE COURT: Almost in the nature of a settlement decree.

MR. POWERS: It is.

MR. RUBENSTEIN: It is. It is precisely that.

THE COURT: Okay.

MR. MAKOWSKI: That's correct, your Honor, and Mr. Rajaram received

no compensation in that settlement, although it was recognized he had expenses and losses.

THE COURT: Okay. Well, that's-- Well, you offered that package of whatever exhibits it is.

MR. RUBENSTEIN: Well, what this is is letters from the EEOC to Mr. Kopeck on behalf of the International to me as attorney for part of it and Mr. Rosenberg, who was then the attorney and Mr. Poist as Chairman of the Chapel, it just says enclosed find conciliation agreement.

THE COURT: What exhibit number is that, Miss D'Amico?

THE CLERK: 316.

THE COURT: 316. Any objection that?

MR. RUBENSTEIN: Objection, yes.

MR. MAKOWSKI: Your Honor, the Court allowed Exhibit Number 318, the

consent agreement, these are the negotiations, or with regarding the negotiations.

MR. RUBENSTEIN: The consent decree is not in.

THE COURT: The consent decree is not in. The papers relating to the consent decree are in that exhibit that I just admitted.

MR. RUBENSTEIN: The consent decree is not in there.

THE COURT: But in any event, the negotiations leading up to that wouldn't be admissible. So I'll sustain the objection.

MR. MAKOWSKI: Your Honor, I would like to offer the deposition of Mr. Ted Kees which was taken before the EEOC.

THE CLERK: That is Exhibit 78 marked for identification.

THE COURT: Any objection?

MR. RUBENSTEIN: Yes, sir.

THE COURT: Sustained.

MR. MAKOWSKI: Your Honor, I would like to be heard with regard to this particular objection.

THE COURT: No, move on.

MR. MAKOWSKI: That --

THE COURT: No, move on.

MR. MAKOWSKI: Thank you, your Honor. Do you have a copy?

MR. RUBENSTEIN: Nope.

MR. MAKOWSKI: Here you go. Well, it's not going into evidence, do I have to give it to him?

MR. RUBENSTEIN: Yes, because you could make argument later on.

THE COURT: You have to give it to him.

MR. MAKOWSKI: I would like to offer Exhibit Number 303, your Honor, which is an affidavit that was taken of Mr. John Banach.

THE CLERK: Plaintiff's Exhibit Number 303 marked for identification.

THE COURT: I would like to see that one.

MR. POWERS: I would like to have it -- we would like to read it.

MR. RUBENSTEIN: Yeah.

THE COURT: Counsel, what is your position on that?

MR. RUBENSTEIN: Objection.

THE COURT: My concern and why I wanted to read it was I, of course, am cognizant of the fact that I granted the motion to quash Mr. Banach's subpoena.

MR. RUBENSTEIN: Yeah.

THE COURT: And I was really foreclosing myself, the trier of fact, from having any relevant testimony. I didn't want to do so. I see no relevance in this, though. Objection sustained.

MR. MAKOWSKI: Your Honor, I

would like to be permitted to read into the record two answers that were provided by the union on request for admission of facts in this case, B-80-0012.

THE COURT: Were they admitted?

MR. MAKOWSKI: Your Honor, these were the admitted -- I would like to read their response to the request for admission of facts.

THE COURT: Oh, Okay.

MR. POWERS: Which union now?

MR. RUBENSTEIN: Which union? Which defendant?

MR. MAKOWSKI: This answer was filed on behalf of all of the defendants, International Typographical Union, Baltimore Typographical Union No. 12, Sunpapers Chapel of Baltimore, Typographical Union No. 12, Jack Poist and Gary Kidwell in answer to request of admission of facts and genuineness of documents.

THE COURT: Okay.

MR. MAKOWSKI: Request Number 18, "That you took no action nor made any effort to inform the plaintiff that he did not have to abide by or comply with the International Typographical Union requirement of filing internal griev-ances which required more than four months to complete." Answer to Request Number 18, "Admitted that none of the defendants informed the plaintiff that he did not have to follow the ITU by-law then in effect."

Request Number 19, "The plaintiff was bypassed for a job opportunity by a white employee with less seniority," Answer to Request Number 19, "Denied."

THE COURT: Well, I guess that isn't an admission, okay.

MR. MAKOWSKI: No, your Honor, it's only to show that they did not even admit the facts which we believe we had

shown in the case, therefore requiring Mr. Rajaram to come forward and prove his case.

THE COURT: All right.

MR. MAKOWSKI: And that they left him no choice. We could have had admissions, although now they have admitted that Mr. Lorenzo had less seniority. They admitted it in their stipulations of fact, that that was not done during these requests for admission of facts. Had it been done at that time, Mr. Rajaram would not have had to go through the additional expense, time of having to prepare proof of those items which finally, a day or two before trial, they determined that they would admit.

MR. RUBENSTEIN: Well, if your Honor please, that is such a complete and utter misstatement of what has occurred. There was never a denial of what happened to the week of August

(sic) 14th, but the way that thing was phrased, we just denied it. But thereafter, we have always, from day one, said that there was a week involved, but that we thought that the reasons were completely and utterly nondiscriminatory and they have known the position of the union, I guess, since at least since Mr. Kees made his determination.

THE COURT: Well, I'm not in any way going to interrupt the trial to take up matters which are essentially with the motion for sanctions, so that has no probative value, that they denied the admission. Go ahead.

The first one, incidentally, was helpful.

MR. MAKOWSKI: Your Honor, I believe that's all I would have with regard to that particular matter. The basic reason I would proffer the Court for me bringing these in was to show

that the manner of the arbitration, with regard to any claims that Mr. Rajaram might have against these unions, for unfair representation or failure to represent or not enforcing his rights under that arbitration award, has never been determined by any other forum, neither the EEOC, the NLRB or the State Court.

THE COURT: I think under the circumstances, as a practical matter, we have resolved what you brought up originally, Mr. Rubenstein, with the additional added (indiscernible) in the way of exhibits, because we have, as a practical matter, taken care of that, one way or the other. Okay. Is there any other preliminaries before we resume?

UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND

KONDIAN R. RAJARAM, PLAINTIFF,

-v-

INTERNATIONAL TYPOGRAPHICAL UNION; BALTIMORE TYPOGRAPHICAL UNION NO. 12; SUNPAPERS CHAPEL OF BALTIMORE TYPOGRAPHICAL UNION NO. 12; JACK POIST, GARY KIDWELL and A.S. ABELL PUBLISHING COMPANY, (sic)

Case No. B80-0012 (entered 2-5-1988)

Baltimore, Maryland
April 13, 1987

TRANSCRIPT OF TRIAL
BEFORE THE HONORABLE WALTER BLACK, JR.

APPEARANCES:

For the Plaintiff:
EDWARD MAKOWSKI, ESQUIRE
PHILLIP MIZRACH, ESQUIRE

For the Defendants:
BERNARD RUBENSTEIN, ESQUIRE
BRIAN A. POWERS, ESQUIRE

Audio Operator: VERONICA J. CAMERON

Proceedings recorded by electronic sound recording, transcript produced by transcription service.

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(at pages 32-35)

MR. MIZRACH: Well, we have a

reason --

THE COURT: I say again, what good does it do?

MR. MIZRACH: Simply this, your Honor.

THE COURT: Objection sustained.

MR. MIZRACH; Thank you.

THE COURT: Mr. Mizrach, I get the feeling that you don't have anything left to ask this witness and in light of the fact that you've -- this is the third day you've had him (indiscernible) it doesn't surprise me. But, if you've got anything else, ask it now and let's turn it over to cross-examination.

MR. MIZRACH; Well, your Honor, with all due respect, I do have these exhibits which relate to these matters and I do want to just cover these few points and I don't think I'm taking too much time with him. I only have a few questions with regard to these matters,

as you can see.

THE COURT: Well, if they're along the same lines, as you know, I'm going to sustain the objections, but go ahead. Maybe it's quicker to get this thing running forward.

MR. MIZRACH: Thank you, your Honor.

BY MR. MIZRACH:

Q What period of time were you paid for with regard to the Fleisig TF after you were taken off of it on December 5, 1976?

A From December 5, '76 up to December 31, '76. Say about three weeks and a few days more, maybe three weeks, three days, something like that. For that short period of time, the first few weeks and, of course, that calculation was based --

MR. RUBENSTEIN: Objec -- your Honor, he asked the question and he

answered it. He got three weeks plus.

THE COURT: Yeah, so let's go on with the next question.

MR. MIZRACH: Thank you.

BY MR. MIZRACH:

Q If you had not been taken off of the Fleisig TF, how much have you calculated you would have earned until Mr. Fleisig returned?

MR. RUBENSTEIN: Objection, objection.

THE COURT: Well, I think for the purposes of the record, he might as well put it into evidence. Relevant, irrelevant, whatever. Go ahead and answer that one, Mr. Rajaram.

THE WITNESS: Just for the '77 year, my recollection is that I earned somewhere near, I'm pulling out my W-2 tax withholding from (indiscernible) for 1977, there I see as gross earnings, $11,380 and some cents. I roughly made

a calculation on the basis of the scale for a regular man for that year, it went to about $15,000 something, and that was just for that full year of 1977. Mr. Fleisig so far as I can recall, came back sometime in May, '78 and those five months of '78 would be on the top of this and there, again, '78 my gross earning here, includes everything they paid, like severance pay, back pay, that $1300 and on the three weeks, three days that they paid for in '76, the check actually came, your Honor, in '78, not in '76. The time card was --

THE COURT: Could you wind up your answer, Mr. Rajaram, cause --

THE WITNESS: Actually for '78, it should have been close to about five or six thousand actually I made. That would have been two or three thousand less than what I could have made if it had been in Fleisig TF until May '78.

THE COURT: Counsel, let me say that. I've permitted that in for the purpose of the record being complete. It almost is in the nature of a proffer, but I regarded it as irrelevant, and counsel if you wish to move to strike, I would strike it.

MR. RUBENSTEIN: Yes, your Honor. I move to strike it.

THE COURT; Yeah, I think under the circumstances it puts it in the record for whatever pruposes the plaintiff may want to use it, but I think it should be stricken.

MR. MIZRACH: Mr. Rajaram -- may I have -- is 127 in? Mr. Rajaram, I'm showing you Plaintiff's Exhibit 127, which is also Defendants' Exhibit Number 10. Mr. Rajaram, can you tell me the first time that this matter was produced, to your knowledge?

MR. RUBENSTEIN: Objection, your

Honor. Objection.

THE COURT: Well, of course, I don't recall what this exhibit is.

MR. RUBENSTEIN: This is the daily log which showed that he worked on Sunday, Nobvember 14th and the days that he worked during that week in question. And, --

THE COURT: It's been admitted into evidence as I recall.

MR. RUBENSTEIN: Yes.

THE COURT: And, was it admitted during the course of Mr. Rajaram's testimony?

MR. RUBENSTEIN: I think it was admitted in the course of --

THE COURT: Earlier?

MR. RUBENSTEIN: In the course of Mr. Poist's testimony.

THE COURT: And, what's the thrust of your objection?

* * * *

(at pages 100-106)

...

THE COURT: Well, I guess the answer is, somebody thought a baby was crying back in --

MR. MIZRACH: '77.

THE COURT: November of '77, so this will show that it wasn't William Harold Rajaram.

MR. RUBENSTEIN: Right. It will show it wasn't William Harold Rajaram.

MR. MIZRACH: We'd offer it for that purpose.

THE COURT: Okay. I'll accept it for that purpose.

MR. MIZRACH: Thank you, your Honor.

COURT CLERK: Plaintiff's Exhibit 358 marked in evidence.

MR. MIZRACH: Your Honor, at this time I'd like to show --I'm not certain, we referred to this early in the case,

your Honor, and I'm not sure whether it was in or wasn't it (sic) and just to clear it up, I'd like to offer it. It's Exhibit Number 73, your Honor, and it has to do with the $246 payment and the letter from Mr. Paul Bowen.

COURT CLERK: It's already been marked for I.D., only.

THE COURT: What's the status of that?

MR. RUBENSTEIN: It's been marked for identification and not admitted, your Honor.

THE COURT: So, you're offering it in evidence at this time?

MR. MIZRACH: Yes, your Honor.

MR. POWERS: No objection.

MR. RUBENSTEIN: No objection.

THE COURT: All right. We'll let that exhibit in.

COURT CLERK: Plaintiff's Exhibit 73 marked in evidence.

MR. MIZRACH: With regard to that, your Honor, I would ask the plaintiff to read only --

MR. RUBENSTEIN: No, your Honor.

MR. POWERS: Yeah, but your Honor, we've been over this letter.

MR. RUBENSTEIN: We've been over this letter.

THE COURT: In any event, it's in evidence. He doesn't have to read it.

MR. MIZRACH: All right, your Honor. I point out to your Honor, with respect to the money figure, right after that money figure in paragraph two, your Honor, it indicates that it's in full compliance with the arbitrator's award.

THE COURT: Okay.

MR. MIZRACH: In light of that, your Honor, now I can offer Plaintiff's Number 86.

COURT CLERK: Plaintiff's Exhibit 86 marked for identification.

MR. RUBENSTEIN: I'm going to object to this. This is the arbitrator --

THE COURT: Sustained. This is not an issue before our court.

MR. MIZRACH: Well, I make a proffer now, your Honor.

THE COURT: Let him make the proffer.

MR. MIZRACH: The proffer is that in evidence is a letter saying that full compliance based on a review from Sun-papers and the union, that based on that review, they paid the full amount that Mr. Rajaram was due and in front of your Honor, in this case, is the Fleisig TF, from which he was taken off in December 5, 1976.

We would indicate to your Honor that this decision in front of you in this case relates directly to whether he was paid the full damages and we would

indicate to you further that Mr. Rajaram has testified and shown your Honor that a letter -- that his name was not among those whose was (sic) listed to be taken off. That this case here, while it contains his name very briefly, it does at least indicatae what the effect of the full arbitrator's award would amount to and that I further proffer to your Honor that as of the date of this decision and your Honor may note that it's on September 7, 1977 that it requested that he be paid for all back wages, up to that point in time, which he had lost, by not being allowed to work by the Sunpapers.

And, that further, he was to be reinstated for any TF position and that the Sunpapers was ordered to hire, as of that date. So, consequently, your Honor, and there is in here also, an agreement in the transcript, that they be bound by this decision. They both

waived any problems they had with regard to it. Consequently, when Mr. Rajaram never had access to this decision and received that letter, he was misled by the union. A direct misleading of him as to what his entitlement was and consequently he would testify, your Honor, and has testified, that he was not paid in accordance with the arbitrator's decision.

THE COURT: Okay. Well, that's not before me, so my ruling on the evidentiary matter stands and the proffer is noted.

MR. MIZRACH: Thank you, your Honor. Now, I'm showning (sic) plaintiff, your Honor, Number 107.

MR. RUBENSTEIN: Well, here we go again. This is the National Labor Relations Board denial.

THE COURT: (Indiscernible). It can't involve -- can't be involved in

this case.

MR. RUBENSTEIN: I cannot be involved in this case.

THE COURT: Sustained.

MR. MIZRACH: Well, then I proffer also that --

MR. RUBENSTEIN: Oh, your Honor--

THE COURT: (Indiscernible) waste of time, Mr. Mizrach. Let's just go on.

MR. MIZRACH: All right, your Honor. Showing plaintiff, your Honor, Number 108.

COURT CLERK: Plaintiff's Exhibit 108 marked for identification.

BY MR. MIZRACH:

Q Mr. Rajaram, are you familiar with this document?

A Yes.

Q Can you tell me what it is?

MR. RUBENSTEIN: It's check stubs -- your Honor, again. I don't --

THE COURT: Are these for paychecks?

MR. MIZRACH: Yes, your Honor. One is -- the first one, your Honor, your Honor will note the amount under gross amount, here where the 108 is, your Honor, on the right-hand side.

THE COURT: Yeah, I see that. What is it for?

MR. MIZRACH: That one is $246.07.

THE COURT: Yeah, for the period ending August 20, 1978?

MR. MIZRACH: Yes.

THE COURT: And, what's this got to do with this case?

MR. MIZRACH: Well, obviously, your Honor, this is the alleged full payment that he received based on and your Honor, Mr. Rajaram has testified that he received that amount, that money in 1978 and this is the money involved

when he was taken off that Fleisig.

THE COURT: All right. Oh, I see what you're showing. That this is to show that --

MR. RUBENSTEIN: That he got what --

THE COURT: Paid in full compliance with the arbitrator's award.

MR. RUBENSTEIN: Yeah.

MR. MIZRACH: That's the allegation.

THE COURT: That is a non-issue in this case, so --

MR. MIZRACH: Well, we go further, your Honor.

THE COURT: Well, in light -- did 73 get admitted?

MR. RUBENSTEIN: Which is 73?

COURT CLERK: Yes, 73 got admitted.

THE COURT: 73 is the letter to--

MR. RUBENSTEIN: Yes.

THE COURT: I'll admit 108 to show he got paid.

MR. RUBENSTEIN: Okay.

MR. MIZRACH: Thanks, your Honor. Now, your Honor will also note that second check stub is a $1500 amount for the termination.

MR. RUBENSTEIN: Well, that's certainly an issue in this case.

MR. MIZRACH: We'll object to that statement, your Honor. We believe that it is.

THE COURT: Okay. Sustained.

MR. MIZRACH: Which one?

THE COURT: Finally have a chance to nail Mr. Rubenstein. I don't know how we got in this posture of you objecting to the other side, but that's all right.

MR. MIZRACH: It's very refreshing.

THE COURT: Well, yeah, Mr. Mizrach, you're a beneficiary here of a happy circumstance. These are all three on the same page and since I've already admitted it into evidence, I don't need to go any further on that.

MR. MIZRACH: Well, I would show, your Honor, that the third amount on the page is a retro amount. The $1308.

THE COURT: Okay. So, all of those items that have been (indiscernible).

MR. MIZRACH: Thank you. Now, your Honor, we would bring to your Honor's attention, there is an Exhibit Number 78, which has been previously, I believe, marked as Plaintiff's Exhibit.

MR. RUBENSTEIN: And, that was the Kees exhibit that was not admitted. We objected and it was not admitted.

MR. MIZRACH: And, we offer it again, your Honor,

UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND

KONDIAN R. RAJARAM, PLAINTIFF,

-v-

INTERNATIONAL TYPOGRAPHICAL UNION; BALTIMORE TYPOGRAPHICAL UNION NO. 12; SUNPAPERS CHAPEL OF BALTIMORE TYPOGRAPHICAL UNION NO. 12; JACK POIST, GARY KIDWELL and A.S. ABELL PUBLISHING COMPANY, (sic)

Case No. B80-0012 (entered May 1, 1987)
Baltimore, Maryland
April 15, 1987

TRANSCRIPT OF ORAL OPINION
BEFORE THE HONORABLE WALTER BLACK, JR.

APPEARNACES:

For the Plaintiff:

EDWARD MAKOWSKI, ESQUIRE
PHILLIP MIZRACH, ESQUIRE

For the Defendants:

BERNARD RUBENSTEIN, ESQUIRE
BRIAN A. POWERS, ESQUIRE

Audio Operator: VERONICA J. CAMERON

Proceedings recorded by electronic sound recording, transcript produced by transcription service.

J & J COURT TRANSCRIBERS
20 Florister Drive
Trenton, New Jersey 08690
(609) 586-4345/586-2311

* * * *

(at page 13)

... The Court notes here that the elimination of the TF positions was in breach of the union contract and the case was taken to arbitration by the union, but that case is not brefore this Court. ...

(Plaintiff's Trial Exhibit No. 319)

NATIONAL LABOR RELATIONS BOARD
REGION 5
9100 Garmatz Federal Building and Courthouse
101 West Lombard Street,
Baltimore, MD. 21201

Telephone (301) 962-2822

December 21, 1977

Edelman, Levy & Rubenstein
Attn: Mr. Bernard W. Rubnenstein
Attorney at Law
10 Light Street, Suite 2400
Baltimore, MD 21202

Re: A. S. Abell Company
Case 5-CA-9020

Dear Mr. Rubenstein:

The above-captioned case, charging violations under Section 8 of the National Labor Relations Act, as amended, has been carefully considered.

As a result of the investigation, it appears that further proceedings are not warranted at this time. I am therefore, refusing to issue complaint in this matter. A written summary report of the

basis for my conclusions has been requested and, accordingly, I am attaching one hereto.

* * * *

Very truly yours,

William C. Humphrey
Regional Director

* * * *

SUMMARY REPORT

As a result of the investigation of this case, it appears that further proceedings are barred by Section 10(b) of the Act. The evidence discloses that on December 2, 1976, the Employer notified the Union that effective December 5, 1976, the Employer would only cover dormant situations up to a thirty-day period. The Union, upon receipt of the notice, requested a meeting and the parties agreed to submit the dispute to arbitration. Arbitration hearings were held on March 24 and May

23, 1977. The investigation reveals that since December 5, 1976, to date, the Employer has refused to employ substitutes beyond the thirty-day period. On September 7, 1977, the Arbitrator issued his decision and award, finding that the Employer violated its contractual obligations when it refused to employ substitutes to replace regular situation holders who are absent for over thirty days. The Arbitrator further ordered the Employer to make whole the employees injured by its actions and to employ substitutes in the future. The Employer, by letter of September 29, 1977, offered to comply with the arbitration award, but only through December 31, 1976, the date the most recent collective-bargaining agreement expired. No new collective-bargaining agreement has been negotiated. The Union, by letter of

October 7, 1977, rejected the Employer's proposal, asserting that the backpay period extends to date. As the evidence clearly discloses that the unilateral change in working conditions was announced and implemented by the Employer in December 1976, prior to six months before the present charge was filed, any further proceedings are barred by Section 10(b) of the Act.

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29 U.S.C. Section 185. Suits by and against labor organizations

(a) Venue, amount, and citizenship. Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this Act, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties,

without respect to the amount in controversy or without regard to the citizenship of the parties.

(b) Responsibility for acts of agent--Entity for purposes of suit--Enforcement of money judgments.

Any labor organization which represents employees in an industry affecting commerce as defined in this Act and any employer whose activities affect commerce as defined in this Act shall be bound by the acts of its agents. Any such labor organization may sue or be sued as an entity and in behalf of the employees whom it represents in the courts of the United States. Any money judgment against a labor organization in a district court of the United States shall be enforceable only against the organization as an entity and against its assets, and shall not be enforceable against any individual member or his assets.

(c) Jurisdiction.

For the purposes of actions and proceedings by or against labor organizations in the district courts of the United States, district courts shall be deemed to have jurisdiction of a labor organization (1) in the district in which such organization maintains its principal office, or (2) in any district in which its duly authorized officers or agents are engaged in representing or acting for employee members.

* * * *

(e) Determination of question of agency.

For the purposes of this section, in determining whether any person is acting as an "agent" of another person so as to make such other person responsible for his acts, the question of whether the specific acts performed were actually authorized or subsequently ratified shall not be controlling.

(June 23, 1947, c. 120, Title III, Section 301, 61 Stat. 156.)

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42 U.S.C. Section 2000e. Definitions

For the purposes of this title [42 USCS Sections 2000 et seq.]--

(a) The term "person" includes one or more individuals, governments, governmental agencies, political subdivisions, labor unions, partnerships, associations, corporations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in bankruptcy, or receivers.

* * * *

(d) The term "labor organization" means a labor organization engaged in an industry affecting commerce, and any agent of such an organization, and includes any organization of any kind, any agen-

cy, or employee representation committee, group, association, or plan so engaged in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours, or other terms or conditions of employment, and any conference, general committee, joint or system board, or joint council so engaged which is subordinate to a national or international labor organization.

(e) A labor organization shall be deemed to be engaged in an industry affecting commerce if (1) it maintains or operates a hiring hall or hiring office which procures employees for an employer or procures for employees opportunities to work for an employer, or (2) the number of its members (or, where it is a labor organization

composed of other labor organizations or their representatives, if the aggregate number of the members of such other labor organization) is (A) twenty-five or more during the first year after the date of enactment of the Equal Employment Opportunity Act of 1972 [Mar. 24, 1972], or (B) fifteen or more thereafter, and such labor organization--

(1) is the certified representative of employees under the provisions of the National Labor Relations Act, as amended, or the Railway Labor Act, as amended;

* * * *

(f) The term "employee" means an individual employed by an employer, except that the term "employee" shall not include any person elected to public office in any State or political subdivision of any State by the qualified voters thereof, or any person chosen by

such officer to be on such officer's personal staff, or an appointee on the policy making level or an immediate adviser with respect to the exercise of the constitutional or legal powers of the office. The exemption set forth in the preceding sentence shall not include employees subject to the civil service laws of a State government, governmental agency or polical subdivision.

* * * *

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42 U.S.C. Section 2000e-2.
Discrimination because of race, color, religion, sex, or national origin

* * * *

(c) Labor organization. It shall be an unlawful employment practice for a labor organization--

...

(2) to limit, segregate, or classify its membership or applicants for membership,

or to classify or fail or refuse to refer for employment any individual, in any way which would deprive or tend to deprive any individual of employment opportunities, or would limit such employment opportunities or otherwise adversely affect his status as an employee or as an applicant for employment, because of such individual's race, color, religion, sex, or nataional origin; or

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42 U.S.C. Section 2000e-3 Other unlawful employment practices

(a) Discrimination on account of opposition to unlawful practices or participation in investigation, proceeding, or hearing.

It shall be an unlawful employment practice for an employer to discriminate against any of his employees or applicants for employment, for an employment agency, or joint labor-

management committee controlling apprenticeship or other training or retraining, including on-the-job training programs, to discriminate against any individual, or for a labor organization to discriminate against any member thereof or applicant for membership, because he has opposed any practice made an unlawful employment practice by this title [42 USCS Sections 2000e-2000e-17], or because he has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this title [42 USCS Sections 2000e-2000e-17].

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42 U.S.C. Section 2000e-5. Prevention of unlawful employment practices

* * * *

(f) Civil action by Commission, Attorney General, or person aggrieved. (1) If

within thirty days after a charge is filed with the Commission or within thirty days after expiration of any period of reference under subsection (c) or (d), the Commission has been unable to sescure from the respondent a conciliation agreement acceptable to the Commission, the Commission may bring a civil action against any respondent not a government, governmental agency, or political subdivision named in the charge. In the case of a respondent which is a government, governmental agency, or political subdivision, if the Commission has been unable to secure from the respondent a conciliation agreement acceptable to the Commission, the Commission shall take no further action and shall refer the case to the Attorney General who may bring a civil action against such respondent in the appropriate United States district

court. The person or persons aggrieved shall have the right to intervene in a civil action brought by the Commission or the Attorney General in a case involving a government, governmental agency, or political subdivision. If a charge filed with the Commission pursuant to subsection (b) is dismissed by the Commission, or if within one hundred and eighty days from the filing of such charge or the expiration of any period of reference under subsection (c) or (d), whicheverr is later, the Commission has not filed a civil action under this section or the Attorney General has not filed a civil action in a case involving a government, governmental agency, or political subdivision, or the Commission has not entered into a conciliation agreement to which the person aggrieved is a party, the Commission, or the Attorney General in a case involving a

government, governmental agency, or political subdivision, shall so notify the person aggrieved and within ninety days after the giving of such notice a civil action may be brought against the respondent named in the charge (A) by the person claiming to be aggrieved or (B) if such charge was filed by a member of the Commision, by any person whom the charge alleges was aggrieved by the alleged unlawful employment practice. Upon application by the complainant and in such circumstances as the court may deem just, the court may appoint an attorney for such complainant and may authorize the commencement of the action without the payment of fees, costs, or security. Upon timely application, the court may, in its discretion, permit the Commission, or the Attorney General in a case involving a government, governmental agency, or political subdivision, to

intervene in such civil action upon certification that the case is of general public importance. Upon request, the court may, in its discretion, stay further proceedings for not more than sixty days pending the termination of State or local proceedings described in subsections (c) or (d) of this section or further efforts of the Commission to obtain voluntary compliance.

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42 U.S.C. Section 2000e-10 Notices to be posted

(a) Every employer, employment agency, and labor organization, as the case may be, shall post and keep posted in conspicuous places upon its premises where notices to employees, applicants for employment, and members are customarily posted a notice to be prepared or approved by the Commission setting forth excerpts from or,

summaries of, the pertinent provisions of this title [42 USCS Sections 2000e-2000e-17] and information pertinent to the filing of a complaint.

(b) A willful violation of this section shall be punishable by a fine of not more than $100 for each separate offense. (July 2, 1964, P.L. 88-352, Title VII, Section 711, 78 Stat. 265.)

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29 U.S.C. Section 411 (a)(1) **Equal** rights. Every member of a labor organization shall have equal rights and privileges within such organization to nominate cancdidates, to vote in elections or referendums of the labor organization, to attend membership meetings, and to participate in the deliberations and voting upon the business of such meetings, subject to reasonable rules and regulations in such

organization's constitution and bylaws.

(4) Protection of the right to sue. No labot organization shall limit the right of any member thereof to institute an action in any court, or in a procedding before any administrative agency, irrespective of whether or not the labor organization or its officers are named as defendants or respondents in such action or proceeding, or the right of any member of a labor organization to appear as a witness in any judicial, administrative, or legislative procedding, or to petition any legislature or to communicate with any legislator: Provided, That any such member may be required to exhaust reasonable hearing procedures (but not to exceed a four-month lapse of time) within such organization, before instituting legal or administrative proceedings against such organizations

or any officer thereof: And provided further, That no interested employer or employer association shall directly or indirectly finance, encourage, or participate in, except as a party, any such action, proceeding, appearance, or petition.

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29 U.S.C. Section 412 Civil enforcement. Any person whose rights secured by the provisions of this title [29 USCS Sections 411-415] have been infringed by any violation of this title [29 USCS Sections 411-415 of this title] may bring a civil action in a district court of the United States for such relief (including injunctions) as may be appropriate. Any such action against a labor organization shall be brought in the district court of the United States for the district where the alleged

violation occurred, or where the principal office of such labor organization is located. (Sept. 14, 1959, P.L. 86-257, Title I, Section 102, 73 Stat. 523.)

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29 U.S.C. 415 Information as to Act. Every labor organization shall inform its members concerning the provisions of this Act. (Sept. 14, 1959, P.L. 86-257, Title I, Section 105, 73 Stat. 523.)

FEDERAL RULES OF CIVIL PROCEDURE.

RULE 8. General Rules of Pleading.

(a) Claims for Relief. A pleading which sets forth a claim for relief, whether an original claim, counterclaim, cross-claim, or third-party claim, shall contain (1) a short and plain statement of the grounds upon which the court's

jurisdiction depends, unless the court already has jurisdiction and the claim needs no new grounds of jurisdiction to support it, (2) a short and plain statement of the claim showing that the pleader is entitled to relief, and (3) a demand for judgment for the relief the pleader seeks. Relief in the alternative or of several different types may be demanded.

* * * *

(c) **Affirmative Defenses.** In pleading to a preceding pleading, a party shall set forth affirmatively accord and satisfaction, arbitration and award, assumption of risk, contributory negligence, discharge in bankruptcy, duress, estoppel, failure of consideration, fraud, illegality, injury by fellow servant, laches, license, payment, release, res judicata, statute of frauds, statute of limitations, waiver, and any

other matter constituting an avoidance or affirmative defense. When a party has mistakenly designated a defense as a counterclaim or a counterclaim as a defense, the court on terms, if justice so requires, shall treat the pleading as if there had been a proper designation.

* * * *

(e) Pleading to be Concise and Direct; Consistency.

(1) Each averment of a pleading shall be simple, concise, and direct. No technical forms of pleading or motions are required.

(2) A party may set forth two or more statements of a claim or defense alternately or hypothetically, either in one count or defense or in separate counts or defenses. When two or more statements are made in the alternative and one of them if made independently would be sufficient, the pleading is not made

insufficient by the insufficiency of one or more of the alternative statements. A party may also state as many separate claims or defenses as the party has regardless of consistency and whether based on legal, equitable, or maritime grounds. All statements shall be made subject to the obligations set forth in Rule 11.

(f) **Construction of Pleadings.** All pleadings shall be so construed as to do substantial justice. (As amended Feb. 28, 1966, eff. July 1, 1966; Mar. 2, 1987, eff. Aug. 1, 1987.)

FEDERAL RULES OF CIVIL PROCEDURE.

RULE 12. Defenses and Objections--When and How Presented--By Pleading or Motion--Motion for Judgment on the Pleadings

(a) **When Presented.** A defendant shall serve an answer within 20 days after the service of the summons and complaint

upon that defendant, except when service is made under Rule 4(e) and a different time is prescribed in the order of court under the statute of the United States or in the statute or rule of court of the state. A party served with a pleading stating a cross-claim against that party shall serve an answer thereto within 20 days after the service upon that party. The plaintiff shall serve a reply to a counterclaim in the answer within 20 days after service of the answer, or, if a reply is ordered by the court, within 20 days after service of the order, unless the order otherwise directs. The United States or an officer or agency thereof shall serve an answer to the complaint or to a cross-claim, or a reply to a counter-claim, within 60 days after the service upon the United States attorney of the pleading in which claim is asserted.

The service of a motion permitted under this rule alters these periods of time as follows, unless a different time is fixed by order of the court: (1) if the court denies the motion or postpones its disposition until the trial on the merits, the responsive pleading shall be served within 10 days after notice of the court's action; (2) if the court grants a motion for a more definite statement the responsive pleading shall be served within 10 days after the service of the more definite statement.

FEDERAL RULES OF CIVIL PROCEDURE.

RULE 15. Amended and Supplemental Pleadings

(a) Amendments. A party may amend the party's pleading once as a matter of course at any time before a responsive pleading is served or, if the pleading

is one to which no responsive pleading is permitted and the action has not been placed upon the trial calendar, the party may so amend it at any time within 20 days after it is served. Otherwise a party may amend the party's pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires. A party shall plead in response to an amended pleading within the time remaining for response to the original pleading or within 10 days after service of the amended pleading, whichever period may be the longer, unless the court otherwise orders.

* * * *

(c) **Relation Back of Amendments.** Whenever the claim or defense asserted in the amended pleading arose out of the conduct, transaction, or occurrence set forth or attempted to be set forth in

the original pleading, the amendment relates back to the date of the original pleading. An amendment changing the party against whom a claim is asserted relates back if the foregoing provision is satisfied and, within the period provided by law for commencing the action against the party to be brought in by amendment that party (1) has received such notice of the institution of the action that the party will not be prejudiced in maintaining his defense on the merits, and (2) knew or should have known that, but for a mistake concerning the identity of the proper party, the action would have been brought against the party.

The delivery or mailing of process to the Unites States Attorney, or the United States Attorney's designee, or the Attorney General of the United States, or an agency or officer

who would have been a proper defendant if named, satisfies the requirement of clauses (1) and (2) hereof with respect to the United States or any agency or officer thereof to be brought into the action as a defendant.

(d) Supplemental Pleadings. Upon motion of a party the court may, upon reasonable notice and upon such terms as are just, permit the party to serve a supplemental pleading setting forth transactions or occurences or events which have happened since the date of the pleading sought to be supplemented. Permission may be granted even though the original pleading is defective in its statement of a claim for relief or defense. If the court deems it advisable that the adverse party plead to the supplemental pleading, it shall so order, specifying the time therefor. (As amended Jan. 21, 1963, eff. July 1,

1963; Feb. 28, 1966, eff. July 1, 1966; Mar. 2, 1987, eff. Aug. 1, 1987.)

FEDERAL RULES OF CIVIL PROCEDURE.

Rule 18. Joinder of Claims and Remedies

(a) Joinder of Claims. A party asserting a claim to relief as an original claim, counterclaim, cross-claim, or third-party claim, may join, either as independent or as alternate claims, as many claims, legal, equitable, or maritime, as the party has against an opposing party.

(b) Joinder of Remedies; Fraudulent Conveyances. Whenever a claim is one heretofore congizable only after another claim has been prosecuted to a conclusion, the two claims may be joined in a single action; but the court shall grant relief in that action only in accordance with the relative substantive rights of

the parties. In particular, a plaintiff may state a claim for money and a claim to have set aside a conveyance fraudulent as to that plaintiff, without first having obtained a judgment establishing the claim for money. (As amended Feb. 28, 1966, eff. July 1, 1966; Mar. 2, 1987, eff. Aug. 1, 1987.)

ANNOTATED CODE OF MARYLAND -- Courts and Judicial Proceedings.

Title 3:

Section 3-223 (a) Petition. -- A petition to modify or correct the award shall be filed within 90 days after delivery of a copy of the award to the applicant.

Section 3-227 Confirmation of award by court.

(a) Petition. -- A party may petition the court to confirm the award.

(b) Action by court. -- The court shall

confirm the award, unless the other party has filed an application to vacate, modify, or correct the award within the time provided in Sections 3-222 and 3-223.

(c) Proceedings when award not confirmed. -- If an application to vacate, modify, or correct the award has been filed, the court shall proceed as provided in Sections 3-223 and 3-224. (An Code 1957, art. 7 Section 11; 1973, 1st Sp. Sess., ch. 2, Section 1.)

Title 5:

Section 5-101. Three-year limitation in general.

A civil action at law shall be filed within three years from the date it accrus unless another provision of the Code provides a different period of time within which an action shall be commenced. (A. Code 1957, art. 57,

Section 1; 1973, 1st Sp. Sess., ch. 2 Section 1.)

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42 U.S.C. 2000e-2. Discrimination because of racer, color, religion, sex, or national origin (a) Employers. It shall be an unlawful employment practice for an employer -- (1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin; or (2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religon, sex, or national origin.

PROOF OF SERVICE

I, Kondian R. Rajaram, petitioner in the foregoing Petition for a Writ of Certiorari to the U.S. Court of Appeals for the Fourth Circuit, DO HEREBY CERTIFY that today, November 14, 1988, I deposited in a U.S. post office, with first-class postage prepaid, three (3) copies, each one identical to anyone of the 40 copies of said petition and attached appendix filed by me today with the Supreme Court, to each of the following three (3) attorneys of record at their latest available addresses of record as recited below:

1. Brian A. Powers, Esquire,
O'DONOGHUE & O'DONOGHUE,
4748 Wisconsin Avenue, North West,
Washington, D.C. 20016
(cousel of record for Respondent, International Typographical Union);

2. Bernard W. Rubenstein, Esquire,
ABATO, RUBENSTEIN AND ABATO, P.A.,
2360 West Joppa Road, Suite 308
Lutherville, Maryland 21093-4697
(cousel of record for Respondents, Baltimore Typographical Union No. 12, Sunpapers Chapel of Baltimore Typographical Union No. 12, Jack Poist and Gary Kidwell); and

3. Jeffrey Peabody Ayres, Esquire,
VENABLE, BAETJER & HOWARD,
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